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WHO SHOULD ORGANIZE STATE ADMINISTRATION?

F. F. BLACHLY

University of Oklahoma

In the United States during the past hundred years there has been a growing tendency for the various state constitutional conventions to assume greater and greater control over state administration. These conventions have secured such control in two ways; namely: by providing for a large number of administrative officers, boards and commissions; and by laying down in some detail their duties and responsibilities. The earlier state constitutions generally provided, it is true, for three or four administrative officers; but, except in the case of the governor, little was specified regarding their duties. For example, the 1819 constitution of Alabama provided for three administrative officers; the 1819 constitution of Connecticut, for five; the 1792 Delaware constitution for three; the Georgia constitution of 1789 for three; the 1792 Kentucky constitution for three; the New Jersey constitution of 1776, for four; the North Carolina constitution of the same year, for four; the 1802 constitution of Ohio, for four, the Louisiana constitution of 1812, for five. In none of these earlier constitutions did the constituent authority attempt any very se-

¹Paper read at the Fourth Annual Meeting of The Southwestern Political Science Association, Dallas, Texas, April 3, 1923.

rious control over administration, except for laying down the powers of the governor.

Organization by the Constitutional Convention

If one will examine constitutions which have been made within the last three or four decades, one will observe the striking fact that not only is provision made for eight or ten officers, but in many instances for boards and commissions as well; and, further, that the powers and duties of these officers and boards are laid down in considerable detail. The New York constitution of 1894, for instance, provided for governor, lieutenant governor, secretary of state, comptroller, treasurer, attorney general, state engineer and surveyor, superintendent of public works, superintendent of state prisons, commissioners of the canal fund. The Alabama constitution of 1901 provides that, "The Executive department shall consist of a Governor, Lieutenant-Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, Commissioner of Agriculture and Industries, and a Sheriff for each county."² The Kentucky constitution of 1890 provides for ten officers. The 1921 constitution of Louisiana provides for eight so-called executive officers besides eight more administrative officers, boards and commissions. This constitution does, however, permit the legislature "to consolidate any of the offices of the executive department except that of Governor, Lieutenant Governor, Treasurer and Secretary of State."³ The constitution contains a good many pages devoted to the powers and duties of these various executive and administrative authorities. The constitution of Oklahoma perhaps crowns the list, with thirteen so-called executive officers besides a corporation commission, the commissioners of the land office, the board of agriculture, the board of equalization, the department of highways, the department of labor, a board

²Alabama Constitution, Art. V., Sec. 112.

³Constitution of Louisiana, 1921, Arts. V and VI.

of arbitration and conciliation, and a state board of education. The corporation commission furnishes the best example of such a board. Not only is it organized by the constitution, but some ten pages, or about a tenth of the entire instrument, are devoted to outlining its powers, jurisdiction and duties, its procedure, and methods of appeal.

The reasons for this control over administration by the constitutional convention are not hard to find. In the first place, the people of the United States have placed great faith in written constitutions. We have been taught to believe that anything embodied in a constitution and sanctioned by the sovereign people must be right, in fact, almost sacred. An administrative system established by this method would, of course, share the peculiar excellence attached to a written constitution. This generally accepted theory made it natural for the writers of the late constitutions to attempt to embrace every department of governmental activity within the sacred documents, in order that all the activities of the state might be perfect.

Undoubtedly, also, the theory of popular sovereignty has had a considerable effect in thus establishing administration. This theory holds that so long as the people must approve or reject the administrative organization planned by the constitutional convention, they are really the sovereigns. If the administrative organization were laid down by the legislature or by the executive itself, the legislature or the executive would act in a sovereign capacity; but if the people choose a special agency to propose, but not to enact, such fundamental law, and the enactment is made by popular vote, the people retain the sovereignty in their own hands. In this case the governmental bodies are mere agents for carrying out the will of the people. Thus the administration becomes peculiarly the servant of the people, and liberty and democracy are preserved.

A growing distrust of the legislature by the people has certainly contributed to the present result. The people have come to believe that the legislature would be in-

capable of planning for a proper state administrative system.

There has been the belief, also, that since the constitutional convention is composed of abler men than any ordinary legislative or administrative body, a plan of administration worked out by them is almost sure to be more consistent, more scientific, and more efficient than one set up in more or less haphazard fashion by less competent persons.

In the face of all these interesting theories, it is necessary to look at the facts, in order to discover whether the administrative systems embodied in the later state constitutions actually do contribute to the efficient carrying on of governmental affairs. Investigation shows that the administrative systems set up in the various states by the constitutional convention have been practically the same in fundamentals. In no case is the administration made subject to the legislature; but a vigorous separation of powers is maintained. Almost without exception the chief administrative officers are elected by the people instead of being appointed by the governor, thus causing a decentralized administration. In most cases their powers, duties and responsibilities are laid down in some detail by the constitution. Local administration in practically all cases has been organized on an absolutely decentralized basis. In other words, the administrative systems set up by constitutional conventions have been decentralized, irresponsible, uncoordinated, and managed by department heads who, being elected, are competent politically rather than professionally.

During the last quarter-century or more there has been a growing dissatisfaction with the administrative systems set up by constitutional conventions and several serious attempts have been made to improve them. These attempts may be divided into two classes: attempts made by recent constitutional conventions and attempts made by the legislature.

There have been only two attempts to reorganize state administration by means of the constitutional convention.

The first of these occurred in 1915, when a New York convention endeavored to deal with the problem through the consolidation of state administrative agencies. The proposed constitution, however, was rejected by the people. Massachusetts, by constitutional amendment prepared by a convention in 1918, provided for an administrative consolidation, which was carried into effect by the legislature in 1919. It is also true that constitutional amendments in regard to a state budget, which have been made in Maryland, Massachusetts, West Virginia and Nebraska, have nominally at least increased the governor's power over the appropriation policy of the state.⁴ The sum total of these accomplishments is so slight that it may be fairly claimed that practically nothing has been accomplished in the way of administrative reorganization by means of the state constitution. Other attempts at reorganization have been made by the state legislature, usually after investigation and report by a commission of economy and efficiency, a tax payers' association, a bureau of municipal research, or some similar organization; or by private accounting firms.

Organization by the Legislature

At the present time eight states are operating their administrative systems under the plans of reorganization adopted by the legislatures. These are Illinois, Idaho, Nebraska, Massachusetts, Washington, Ohio, California and Maryland. Some twelve or thirteen other states have proposed plans for administrative reorganization, or have instituted inquiries concerning it.

In every case of such reorganization, except in Massachusetts, a complete and well rounded administrative system was impossible to attain, because of the fact that the constitution itself provided for several of the chief administrative officers of the state. In Illinois it was impossible for the new administrative system to affect the elective officers provided for in the constitution, which include the

⁴W. F. Dodd, *State Government*, p. 246.

governor, lieutenant governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction, and attorney general. In Idaho the constitution provided for a governor, lieutenant governor, state auditor, state treasurer, secretary of state, attorney general, and superintendent of public instruction.⁵ In Nebraska "Eight constitutional officers and four constitutional boards were retained."⁶ In Massachusetts the constitutional convention permitted the legislature to reorganize the state administration into not more than 20 departments.⁷ In the Washington plan of consolidation it was impossible to complete a real reorganization, due to the fact that the governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands were provided for in the constitution.⁸ In Ohio the administrative code could not touch the constitutional offices of governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, and attorney general.⁹

In California the constitutional provisions concerning the governor, lieutenant governor, comptroller, treasurer, attorney general, surveyor general, secretary of state, superintendent of public instruction, and state board of equalization had to be taken into consideration in the plan of reorganization. In Maryland, to have put the plan of administrative reorganization completely into effect would have required "three constitutional amendments, affecting the offices of the attorney general, the comptroller and the treasurer, respectively."¹⁰

While the legislature of none of these states, except Massachusetts, had the power to establish a thoroughly

⁵Idaho Constitution, 1889. Art. IV.

⁶C. G. Haines and B. M. Haines, *Principles and Problems of Government*, p. 332.

⁷*Administrative Consolidation in State Governments, National Municipal Review*, Nov., 1919.

⁸Washington Constitution, Art. III.

⁹Ohio Constitution, Art. III.

¹⁰*American Political Science Review*, Nov., 1922, p. 644.

integrated administrative system, due to the fact that so many officers are provided for in the constitution, yet in most cases these states are not so badly off as many others would be in case they wished to follow suit. Any effective administrative reorganization by the legislature would be virtually impossible in Oklahoma, for instance, because of the large number of constitutional officers, boards and commissions, and the amount of detailed matter in the constitution regarding them. The difficulties that have been and may be experienced in the attempt to organize a scientific administrative system lead naturally to the first main objection to the organization of administration by the constitutional convention, i. e., the inflexibility of the constitutional method.

Objections to Constitutional Organization

There are several reasons why an administrative system established by the constitution is inflexible. A constitutional convention to amend the constitution is rarely called, and so the old machinery of government, once established, continues in force years after it has ceased to function. When a new convention is called it is likely to be composed of men who do not realize the need of administrative changes, instead of those who have served in the actual administration of government, and so are thoroughly conversant with its needs. Even if the members of the convention have a general knowledge that the machinery of government is not working well, they are not able, because of lack of intimate knowledge, to understand the detailed adjustments necessary to make it work smoothly. A single illustration may demonstrate this point. We all know quite well that the Oklahoma budget system is not functioning properly. How many members of a constitutional convention would realize that the causes for its failure are:

- a. The fact that estimates are not rock bottom estimates, because the governor has no supervisory control over the officers making them, at the time of making.

b. The fact that since the governor has no effective control over the officers of administration, he cannot compel them to prepare their estimates in accordance with the total estimates of proposed expenditures and available revenue.

c. The fact that since the examiner and inspector, according to the constitution, has the right to establish the accounting system for the state institutions, he may impose any system of accounts upon these institutions, although the accounting classification should be integrated with the budget classification if the budget system is to work smoothly.

d. The fact that there is no way of controlling the auditor if he chooses to embarrass the governor in making a budget, by supplying statements that are meaningless or inaccurate.

e. The fact that since the governor is not responsible to the legislature he may or may not prepare a real appropriation bill, just as he wishes.

f. The fact that a governor who is retiring from office is charged with the duty of preparing the budget for his successor.

g. The fact that the fiscal year does not fit in well with the time that the governor assumes office.

h. The fact that the governor will not prepare a real responsible budget when he knows that the legislature will do with it as they see fit, despite his plans.

i. The fact that there must be an organic relationship between the governor and the legislature, if the legislature is to hold the governor responsible for the budget.

j. The fact that there must be a chance for a "show down" between the executive and the legislature if the executive is to be held responsible.

Now the knowledge of all these adjustments necessary for the proper working of a budget can only be obtained from intimate knowledge of the system itself or else from a very careful study of the theory of budget making. Your ordinary member of a constitutional convention neither

knows these things from practical experience nor through a study of budgetary theory.

Again, if a constitutional convention does submit a new constitution involving significant administrative changes, the people are almost sure to vote it down. They little appreciate, perhaps, the need of changes from the view point of administration. Politicians and interested parties can always drag across the trail the red herring of centralization, aristocracy, socialism. Such a cry is almost certain to lead the people to vote against a constitution making significant alterations in the framework of the administrative machine.

But, you may say, the people have the right to amend their constitution at any time, and so by the process of amendment will make the changes necessary for the proper functioning of the government. Actual experience with state amending processes does not bear out such a contention. An examination of the great number of constitutional amendments passed during the past ten years in all of the states reveals the fact, that very few of them have dealt with administration. Those which effect significant administrative changes could almost be counted on the fingers of two hands. It is true that there have been several amendments submitted, dealing with things of minor importance such as increase of salary for state officers, etc., but even slight administrative changes have nearly always been defeated as the people have not understood the benefits which might arise from them.

The reasons why the people will not vote upon administrative changes, or when voting defeat them, are evident. In the first place, they have even less knowledge than the constitutional convention regarding the need of changes. They know nothing about the complex machine which they are asked to help adjust. They, therefore, take no interest in amendments that have for their purpose administrative changes. One can imagine the intense excitement and discussion that a constitutional amendment to change the fiscal year, to change the accounting system, or to change the powers of the examiner and inspector would cause! To

pretend that the people would see the need of a true organic relationship between the governor and the administration and between the governor and the legislature, before a responsible budget is possible, would be to presume an insight into administration that few political scientists even have been able to attain. Yet the enacting of amendments fully as complicated as these is absolutely necessary if administration is to be carried out properly.

Perhaps the greatest objection to entrusting the organization of administration to the constitutional convention is found in the fact that this eliminates practically all responsibility for the proper functioning of the administration machine. The members of the constitutional convention which establishes the administrative body go completely out of the control of the people as soon as they have completed their work. To hold the people who vote upon the constitution responsible is of course an impossibility. This places what little responsibility that may be left, upon either the legislature or the executive. Since the legislature did not establish the system, can as a rule take but a very minor part in changing it, and can only to a slight degree control it, the legislature cannot be held responsible for its operation. Since the executive and those associated with him had nothing to do with the planning of the system, they cannot be held responsible. The administration is always able to lay the blame for poor results to the "system." I have heard more than one state governor deplore the fact that, try as he would, he could not administer the public business efficiently, because he had no part in the planning of the administrative system and no genuine control over the machine that he was expected to run.

By this time it should be clear that the theoretical arguments in favor of administrative organization by the constitutional convention have little weight against the practical disadvantages of this plan. The naive faith in written constitutions must give way to a realization that these documents share the imperfections common to all the works of mankind; and that too great an extension of their scope makes them defeat their own ends, by giving the people,

instead of a clearly defined form of government, an unwieldy, inflexible, unmanagable and cumbersome governmental machine. The idea that popular sovereignty resides in the direct vote upon administrative details is of course absurd in any state where the legislative body, being elected by the people, is subject to popular control. Popular distrust of the legislature should not lead necessarily to a desire to place more power in the hands of the constitutional convention or the people themselves; for there are at least two other alternatives, namely, a better organization of the legislature, or the transfer of certain powers to the executive. The argument that the constitutional convention is likely to be composed of exceptionally competent men must be met by the reply that even very great competence does not give men an understanding of the working details of specialized forms of administration, nor the power to foresee needs which may arise in the future. It might be unkind to remark in this connection that the administrative machines which have been set up in the different states by nearly two hundred state constitutional conventions do not justify the assumption that the men in these conventions were all administrative experts!

From every point of view, then, the organization of state administration by the constitutional convention is a mistake; since the theoretical arguments in its favor are weak, while the practical objections to it are strong. No amount of old-fashioned *a priori* political theory can alter the fact that a method which results in an inflexible administrative system, whose parts are uncoordinated, and for the workings of which nobody can be held responsible, cannot be defended.

Two other methods of organizing administration deserve attention. These are, organization by the legislature, and organization by the executive with the consent of the legislature.

Organization by the Legislature

Organization by the legislature is certainly preferable to organization by the constitutional convention; for it is

both a more flexible method, in that the legislature can make changes quite easily if the machine is not working properly, and also more responsible, since the legislature can be held more nearly responsible to the people than can the constitutional convention. This system has, however, several faults. For the proper functioning of administration there must be a nicely adjusted series of relationships, not mere paper relationships, but actual working relationships, between the legislature and the executive, between the executive and the heads of departments, and between the different departments, officers and bureaus constituting the system. Most of these relationships must necessarily be developed as the result of making innumerable minor adjustments. The legislative branch is in a position to know neither the adjustments that should be made nor the best manner of making them. They must be worked out by those who know as the result of experience. As Mill pointed out: "Every branch of public administration is a skilled business, which has its own peculiar principles and traditional rules, many of them not even known any effectual way, except to those who have at some time had a hand in carrying on the business, and none of them likely to be appreciated by persons not practically acquainted with the department."¹¹ Now, as it is manifestly impossible for the members of the legislature to know these details, they are in no position to plan for administration.

Again, if the legislature organizes administration, the official head of the administration cannot be held responsible for its functioning; since, just as in the case of constitutional organization, it can shift responsibility for maladministration upon the legislature, by claiming that it cannot properly conduct business under the given system. A state legislature can virtually take away from the executive all effective control by outlining in detail the organization of the various administrative departments, prescribing the powers, duties and responsibilities of the various offi-

¹¹John Stuart Mill, *Representative Government*, p. 37.

cers, and leaving them independent of the theoretical head of the administration.

Another effect of permitting the legislature to organize a great number of unrelated and uncorrelated departments, bureaus and officers, is, as Dr. Goodnow points out, to subject the administration to far too great political control. "For if a head of a bureau is subject to no administrative superior, as is the case with most of the heads of the state bureaus, he can hardly fail to be regarded as a political officer who should, as far as possible, conform in political opinions with the political party in control of the state government. The result is that, although the duties of the heads of many of the bureaus are really almost exclusively administrative in character, the heads are changed, so far as the law allows, with every change of administration."¹² The legislature, by its powers of organization, can virtually do away with the permanency of heads of large departments and bureaus; or, in other words, it can do away with one of the cornerstones of good and efficient administration.

Organization by the Administration

In order, therefore, to make administration flexible, responsible, non-political and efficient, it would seem desirable to permit the administration largely to organize itself, as in most European countries. Although it is true that in these countries the legislative branch of the government has organizational powers, as a matter of practice it does not exercise them, particularly in details; but leaves this work to the executive. To introduce such a system in American state government, however, would probably mean not only a complete change in our state constitutions, but also in our constitutional theory; as it would mean that the executive should be subordinated to the legislature instead of coequal to it, in order to prevent jealous attempts on the part of the legislature to control administration. In other

¹²F. J. Goodnow, *Principles of Administrative Law in the United States*, p. 127.

words, it would demand that responsible type of government, usually called the parliamentary system. The present relationship of the executive to the legislature in our state governments is unquestionably one of the greatest of all the hindrances that stand in the way of better administration.

An executive responsible to the legislature would naturally be permitted to hold heads of administrative departments responsible to himself, and to make any changes in the administrative system which changing conditions might demand. This arrangement would secure flexibility, efficiency and responsibility, while minimizing political influences, since the chief executive could be called to account at any time in case he appointed men more noteworthy as politicians than as administrators.

The adoption of such a system would solve not only the problem of the relationship of the executive to the administration but also the relationship of the executive to the legislature, a problem which has not been met successfully in any recent state reorganization. To continue the traditional policy of giving powers to the executive and yet establishing no agency through which he may be controlled, may perhaps simply increase irresponsibility in case exceptional men are not chosen for the governorship. To say that the governor is responsible without at the same time giving him methods of making his responsibility effective, is to establish a shadow for a substance. To say that he is responsible without establishing some agency for holding him responsible is to trust in God without keeping the powder dry.

Our political traditions are such, however, that it will probably be a long time before the parliamentary system is adopted by many states. It will be well, therefore, to consider the method of organizing administration which will bring about the best results under our present form of state government. From the foregoing discussion we have found that organization by the constitutional convention is highly objectionable, as it imposes an inflexible system and makes it impossible that anyone should be held

responsible for maladministration. Organization by the legislature allows far more flexibility, but still leaves responsibility divided between legislature and executive; while it offers no guarantee that the administrative system will be logical or properly coördinated. Organization by the executive, who shall appoint and remove all heads of departments and all officials not subject to civil service, and who shall establish the detailed methods by which public work shall be carried on, is preferable to either of the foregoing plans, as it fixes responsibility, and allows any necessary changes to be introduced as soon as the need for them becomes apparent, by the person best fitted to understand their significance and value. It is true that the legislature might hinder the executive, since he has no part in law-making, by passing laws which call for undertakings that are not feasible under given circumstances; by withholding necessary funds, and by refusing to sanction appointments to which its consent might be required; but with all these disadvantages, the system of administrative organization by the executive, with the consent of the legislature, is the best possible under our traditional system of state government.

THE PRESENT STATUS OF FARM TENANCY IN THE SOUTHWEST¹

W. E. GARNETT

Agricultural and Mechanical College of Texas

All consideration of any social question should, as far as possible, be based on the solid rock of exact fact, rather than on the sand of conjecture and theory. Simply bringing together the facts, however, does not get us very far. It is equally important to consider the causes responsible for given conditions, and the social significance of these conditions, together with measures for checking undesirable tendencies and promoting desirable ones.

Unfortunately, many of the facts needed for a satisfactory picture of the tenancy situation are at present unavailable. The Census, of course, is our chief source of data along this line. The Census figures, however, may be quite misleading unless a number of factors, about which the Census gives little or no information are taken into account.

Recognizing its limitations, then, let us see what story the Census has to tell.

Extent of Tenancy

On analyzing the Census figures, we find that in all of the states under consideration, except New Mexico, slightly over half of all the farm operators are classed as tenants, the exact figures being, Texas 52.3 per cent; Oklahoma, 51 per cent; Arkansas 51.3 per cent; Louisiana 57.1 per cent; New Mexico 12.2 per cent.

Since New Mexico has so little tenancy as compared to the other states considered, and since the conditions in much of that state are so different from those prevailing in the others, it will not be considered further in this discussion.

Only four states, Georgia, South Carolina, Mississippi,

¹Paper read at the Fourth Annual Meeting of the Southwestern Political Science Association, Dallas, Texas, April 4, 1923.

and Alabama, have a larger percentage of tenancy than our group, while the great majority of states have only about half the proportion of tenancy as this group.

MAJORITY OF TENANTS WHITE: It is commonly thought that the larger part of the tenants are negroes. This is not true, except in Louisiana. For example, in Texas there are 177,198 white tenants as compared to 55,111 negroes, or more than three white tenants to one negro. In Oklahoma there are 88,684 white tenants to 9,158 negroes, or almost ten whites to one negro, while in Arkansas slightly over half of the tenants are whites.

The 177,198 white tenants of Texas—and they constitute slightly over half of all white farmers—together with their families, represent close to three-fourths of a million people or almost one-fifth of the total population of the state, and in Oklahoma they represent approximately the same proportion.

Social students may well ask, why these conditions? Over 50 per cent of tenancy in a territory less than two generations from the time when practically unlimited amounts of land could be had almost for the taking! Does such a situation point to social and economic mal-adjustments, or to the presence of a large number of low grade people without sufficient initiative and foresight to put them into the land owning class?

If the point of view of most sociologists, that a high percentage of tenancy is socially undesirable, is correct, we need to ask these questions with ever increasing insistence. The first step in any constructive program, however, is to thoroughly analyze the causes for any undesirable conditions. Such an analysis will point the way to constructive remedies.

Before considering further the question of causes of such a high percentage of tenancy, it would be well for us to note the tendencies regarding a few of the most significant phases of the question. Tendencies are even more important for the sociologist than present conditions.

Significant Tendencies

TENANCY INCREASING: In Texas and Arkansas, the percentage of tenancy has been steadily climbing for the past 40 years. In Oklahoma there was a decrease from 54.8 per cent to 51 per cent in the last Census period. In Louisiana there was a decrease from 58 per cent in 1900 to 55.3 per cent in 1910, but an increase to 57.1 per cent in 1920.

Table I compares the relative increase of farm owners and tenants for the past 40 years. In the last decade in each of the states except Oklahoma, the percentage of increase for the tenants was practically double as much as that for the owners.

TABLE I

Per cent of Increase or Decrease in Number of Owners and Tenants,
1890-1920.

State	Date	Owners	Tenants
Texas	1910-1920	2.7	5.8
Texas	1900-1910	11.8	25.5
Texas	1890-1900	33.6	83.2
Oklahoma	1910-1920	9.1	-6.1
Oklahoma	1910-1920	41.7	120.4
Oklahoma	1890-1900	593.4	72592.3
Arkansas	1910-1920	5.6	11.1
Arkansas	1900-1910	10.1	32.2
Arkansas	1890-1900	15.2	102.6
Louisiana	1910-1920	9.5	16.2
Louisiana	1900-1910	10.7	-9
Louisiana	1890-1900	26.5	118.6

TENANTS OPERATING MORE LAND: The amount of land operated by tenants is another aspect of this question which is worthy of note. This is especially true when we recall that communities with a large percentage of the farms operated by tenants usually find it almost impossible to keep up good community life and to have efficient community institutions. Furthermore, land operated by tenants tends to deteriorate. In Texas, the amount of land operated by tenants increased from 25,079,104 acres in 1910 to 31,483,612

acres in 1920, or 19 per cent, while during the same period that operated by owners decreased 1 per cent. In Oklahoma the amount operated by tenants increased only 0.8 per cent, while that operated by owners increased 12 per cent. The tenant acreage increased 10 per cent in Arkansas, and 6 per cent in Louisiana, while the owner operated acreage decreased 4 per cent in the former and 8 per cent in the latter.

In connection with these figures it may be well to note that the percentage of tenancy is almost invariably highest where the soil is most fertile. Charts which show the distribution of tenants in Texas by counties, indicate the greatest concentration of tenants in the fertile black land of the central part of the state. Another significant thing shown by such charts is how tenancy has spread to the recently settled counties in the newer parts of the state. Many of these counties show from 30 to 50 per cent tenants, all of whom are white.

It is interesting to compare a chart, showing the distribution of tenants, with a chart showing the percentage of land owned by people living outside of the county where the land is situated. It would be even more interesting and significant if we had data showing the total absentee ownership. The following facts regarding the concentration of land in single holdings are pertinent. In two Texas counties there are single holdings of over 500,000 acres; two counties with single holdings of 300,000 to 400,000 acres; three counties with holdings of 200,000 to 300,000 acres, and twenty counties with estates of from 100,000 to 200,000 acres.

While it is undoubtedly true that the concentration of land in few hands, and especially in the hands of absentee owners, tends to aggravate the problem of tenancy, yet we should bear in mind that in some sections climatic and topographical factors make most economical a type of farming requiring large holdings. Unless we remember this, these facts may lead to erroneous conclusions. It may be noted, furthermore, that where it is an economical proposition to do so, many of these large holdings are being broken up.

Whether this is going on as rapidly as is socially desirable is an open question, especially when we consider the bearing of the exhaustion of public lands on the tenant question.

CROPPERS AND SHARE TENANTS INCREASING: In each one of the states being considered there has been a decided decrease in the number of cash and standing rent tenants, with a great increase in the number of share tenants and croppers. The exact figures for each state are given in the accompanying table.

TABLE II
Specified Forms of Tenure

STATE	Form of Tenure	PER CENT OF TOTAL						PER CENT INCREASE		
		Total		White		Negro		Total	White	Negro
		1920	1910	1920	1910	1920	1910			
Texas	Share Tenant and Cropper	48.4	44.2	44.6	41.5	65.5	57.8	14.2	10.4	27.7
	Cash Tenant & Standing Rent	2.8	4.2	2.8	3.6	2.8	7.3	-29.3	-18.2	-56.1
La.	Share Tenant and Cropper	45.6	40.4	27.6	23.	67	61.2	26.9	33.8	23.8
	Cash Tenant & Standing Rent	10.	12.	7.6	8.8	12.8	15.9	6.8	-3.7	-8.8
Okla.	Share Tenant and Cropper	40.2	38.	40.	38.4	42.4	35.1	6.9	6.6	9.5
	Cash Tenant & Standing Rent	8.2	11.4	8.5	12.	5.5	6.8	-27.8	-27.9	-26.
Ark.	Share Tenant and Cropper	40.8	31.9	32.1	27.1	62.1	43.4	38.4	22.	62.8
	Cash Tenant & Standing Rent	7.8	14.2	5.5	8.8	12.8	26.9	-40.2	-33	-45.9

There are three possible ways of accounting for this increase of croppers and share tenants: First, their ranks may have been swelled by accessions from among those formerly working as day laborers; second, the increase of this

group may have been due to a failure of a due proportion of croppers to climb another round of the agricultural ladder into the ranks of the standing rent and cash rent group; and third, mishaps may have caused those in the standing rent and cash rent group to descend the agricultural ladder one round. Generally speaking, the croppers have about the same social status, and make approximately the same income as hired laborers. In good years, however, their income is more; so on the whole, moving into the cropper class from the hired class is usually considered the first step up the agricultural ladder. If the increase of this group is due to the second or third causes mentioned, it is undoubtedly a question of serious concern socially speaking. If, however, the increase in this group is due to a movement from the ranks of hired laborers, it may represent an advance. This whole phase of the tenancy question needs much more careful investigation. Census figures regarding the classification of tenants are said not to be very reliable, especially those of the 1910 Census. If, however, they are at all indicative of actual conditions and trends, from a sociological standpoint they are probably the most significant of all the figures given in this paper.

Those who are familiar with the situation at first hand know that it is in the share tenant and cropper group that we find the major portion of the shiftless, roving, homeless, hopeless families, who if present in large numbers, make good community life impossible. From a third to a half of this group move each year.

MANY TENANTS CLIMBING THE AGRICULTURAL LADDER: The cash and standing rent tenants are as rule, climbing the agricultural ladder and in due time will become land owners. An analysis of the ages of tenants indicates that this process is going on, and that the percentage of tenancy tends to fall off as the farmers get older. In Oklahoma and Texas, approximately 80 per cent of the farmer operators under 25 years of age are tenants, whereas, only about 30 per cent are tenants after they pass 55 years of age. In this respect, however, Texas and Oklahoma, as well as the other Southern States, show a very much higher percentage of

tenancy among the farmers above 50 than the states of the Middle-West and North. For example, Kansas and Iowa show as high a percentage of their farmers under 25, as tenants, as Texas and Oklahoma, yet less than 10 per cent are tenants after they pass the age of 55, or one-third as many as in Texas and Oklahoma. It is questionable, however, whether with the increasing price of land as many will be able to climb the agricultural ladder in the future as in the past.

As long as tenants continue to move up the agricultural ladder in a reasonable length of time, the situation may be considered healthy and there is no undue cause for social alarm over the tenancy question. The individuals in the standing rent and cash rent group do not shift about so much, and they usually bear a fair share of the support of community life and community institutions.

In fact, recent farm management studies in several Texas counties indicate that last year, at least, the standing rent and cash rent tenants on the whole made a larger labor income than the owners. Farm Management studies almost invariably show that the farmers with small capital, from \$3,000 to \$5,000, make a better income as tenants than as owners.

LAND VALUES INCREASING FASTER THAN INCOMES: In the last decade, the average value of land in each of the states being considered increased nearly 50 per cent. While the price of agricultural products has also increased considerably during this period, this increase is more than off-set by the increased cost of living. Farm management investigations indicate that the net incomes of both owners and tenants averages somewhat less than \$500. Furthermore, such incomes since the 1920 crash in farm prices, have tended to be less rather than more than ten years ago.

It is to be hoped and expected that the various movements now going on in the agricultural world—legislation favorable to agricultural interest, organization of a better marketing system, increased credit facilities, improved agricultural practices resulting from various forms of educational effort—will result in increasing the income of all

classes of country people, both owners and tenants. Many students of the situation, however, think that the larger portion of such increases will tend to be absorbed in increasing land values, and consequently in higher rents. As already pointed out, land values are certainly increasing—increasing all over the country. Whether these increases are due to the working of such an economic law, or to the exhaustion of free land and increased population, we will not undertake to say. We only know that with constantly increasing land values without a corresponding increase of incomes, it will become more and more difficult for a man with small capital to become an independent owner. Furthermore, there is little indication that the tenants are tending to rapidly change their farming methods or the terms of their contracts with their land-lords in such a way as to enable them to very materially increase their incomes.

STANDARDS OF LIVING: There is least available data on this aspect of the tenancy problem, an aspect of fundamental interest to the sociologist. Hence we can make few positive statements about the standards of living among tenants and can say almost nothing about the tendencies in this regard. We know in a general way that a large percentage of the country homes of all classes have serious short comings—poor houses, poorly furnished, ill equipped with labor saving conveniences, and lacking an adequate supply of good literature and other things tending to contribute to the refinements of life and the best social heredity. We know, furthermore, that in many farm homes the diet is not well balanced; and more significant still, many farm women are so overburdened with work that their nerves are constantly on edge and there is neither time nor energy left to give their children proper training. In Texas, for example, according to the 1920 census, 91.2 per cent of the farm homes are without running water, while less than 2 per cent have electric or gas lights. In this state only one farm home in three is equipped with a telephone, and three out of four are still without an automobile. Furthermore, 165,010 Texas farmers, or 37.8 per cent of the total, reported no dairy cows, and 137,463 or 31.6 per cent said they had no garden.

The situation with regard to the items just mentioned is approximately the same in the other states being considered as it is in Texas.

Since the tenants usually enjoy a smaller total income than the owners they have less available to maintain a high standard of living, consequently the statements of the preceding paragraph would apply to this group to an even greater extent than to the owners. Moreover, since the general educational level among the tenants is lower than among the owners, they have an additional handicap of ignorance as to how to make the best use of what they have in maintaining good living standards. In addition to this, those tenants who have an ambition to save enough to become owners frequently stint their families unmercifully to accomplish this end, with the result that their lives become sadly dwarfed and twisted.

The standards of living among tenants are no doubt tending to improve. How much, it is impossible to say. One of the most potent forces tending to bring this improvement about is the home demonstration work. The home demonstration workers, however, say that it is this group, who really need their assistance the most, whom they have the most difficulty in reaching.

The educational standards among tenants are also probably rising slightly, though here again, we can make no positive statement either as to present conditions or as to tendencies. We do know, however, that it is much harder for the schools to keep a good hold on the whole tenant group in general and the croppers and share tenants in particular than the children of owners. The same appears to be true of the church. In fact, various church surveys would indicate that the influence of the church with this group is growing weaker rather than stronger.

POLITICAL ASPECTS: Here again we have little exact information as to conditions, and almost none as to tendencies. We know that there is great unrest among country people in general, and justly so, about some of the handicaps under which they labor; and that they are prone to follow certain political demagogues as the Moses who will lead

them on to the promised land. All too frequently these demagogues gain their following by attacks on the very measures most likely to get at the root of the troubles. Since the tenants as a rule do not have the information on which to base well balanced judgments, apparently they are the ones who are most frequently misled by the demagogue's siren song. In addition to this in several recent elections there was considerable evidence of what a well known writer has aptly called the *Revolt of the Underprivileged man*.

Conclusions

What conclusions are justified after this brief review of the tenancy situation and the more pronounced tendencies regarding its several aspects? Does not the fact of ever increasing land values, together with a constantly increasing rate of tenancy and the social and political problems which a large percentage of homeless, landless people raise, force us to the conclusion that it is high time for those directing public affairs to begin to carefully consider a public policy for dealing with the question.

Let me repeat, however, that before any sound policies can be mapped out it will be necessary to have a much more careful study of the whole situation than has so far been made. Not only will it be necessary to study the facts and tendencies such as have been mentioned in this paper, but it will also be necessary to make a more careful analysis of the causes as to why the tenants occupy their present status. Is this status due to:

1. Inferior biological heredity?
2. Inferior social heredity?
3. Poor economic opportunities—including mal-adjustments of the marketing system and of the credit system?
4. Exploitation by stronger groups?
5. Insufficient education, or education ill adapted to needs?
6. Natural shiftlessness and lack of ambition to get ahead?
7. Bad luck?

8. Too frequent moves?

9. Contraction of family obligations before an economic start is secured?

10. Weak vitality on account of (a) improper food; (b) ravages of hook worm or malaria; (c) unsanitary living conditions; (d) overwork on the part of the women—especially during the child bearing period; (e) excessive child labor, etc.?

The indications are that all of the factors just listed help to account for the present status of many of those in the tenant group.

Successful remedies must be based on full knowledge of the causes. Let us, therefore, redouble our efforts to get at the causes.

In the last few years much attention has been given to an analysis of the economic side of the situation and with the full publication of the data which workers on this angle have accumulated we should have before us a fair picture of the relative part played by the economic factors.

The Sociologist, the Biologist, the Psychologist, the Educators, and the Political Scientists apparently have not made as good progress in digging out the facts as to their angles of the problems as the Economists have with their angle.

The results of numerous studies with psychological tests would indicate that this field of research may help to point the way as to what is possible and what is not possible with various tenant groups. Studies as to the physical and mental effect of hookworm and malaria can also undoubtedly make a valuable contribution. The same is true of biological studies of family histories. Furthermore, it still remains to be determined what part social heredity plays in the whole situation and especially its bearing on the efficiency of our educational efforts in behalf of this group, as well as its effect on the possibility of developing habits of thrift.

Until we have such studies as these we will not be in a position to properly interpret the figures of the economist. In other words, until we know more about the human factor in the question, many of the figures of the economists must

be taken as results rather than as causes. Furthermore, let us never forget that there is continual interaction of each set of factors on the others—that all continually intradigitate.

In this connection, I would like to remind our friends, the Economists, that in their consideration of this question they cannot afford to ignore, as many of them do, judging by their writings—the sociological factors in the situation. The Sociologist, on the other hand, cannot afford to neglect the economic factors. Furthermore, by making unwarranted and extravagant statements some so-called Sociologists, who let their feelings run away with them, have tended to discredit the whole social point of view. In presenting their side of the question the Sociologists should always remember (1) that the agricultural ladder is working for a large number of tenants; (2) that the farmer with small capital frequently does better for himself and his family as a tenant than as an owner, and (3) that there are many people better off working under some one else's direction. The Economists, on the other hand, in drawing up their conclusions on tenancy problems, need to bear in mind that a large percentage of tenancy invariably disrupts community life and makes it impossible to maintain good community institutions, which in turn tends to lower the whole economic level.

The Political Scientists, too, in framing laws to deal with this question must take account of both the economic and social aspects of these questions. For example, laws designed to deal with tenancy by limiting size of farms, unless based on accurate classification of lands may do infinite harm.

While this paper is not supposed to deal with constructive measures I would like to be permitted to close my analysis of the present situation with one or two constructive suggestions. These are:

1. The present situation and present tendencies make it desirable for each state in this territory to at once seriously consider definite policies for relieving undesirable features of the tenancy situation.

2. The first step in these policies should be the creation of Tenancy Commissions, as North Carolina is doing, to make a study of every angle of the problem and to formulate policies.

3. In Texas, at least, if the state penitentiary lands are to be disposed of, it might be desirable for some of this land to be used in land settlement experiments based on the California plan, even before a commission has time to make a study and report.

THE EFFECT OF THE WORLD WAR UPON THE NATIONAL SPIRIT OF THE COLORED PEOPLES*

JOE L. CLARK

Sam Houston State Teachers College

In much of the grist from the press of today there is a tendency toward radicalism. Especially is this true of that which deals with racial problems. In view of the chaotic conditions now prevailing throughout the world this tendency is probably natural. Nevertheless it portends evil.

In one of the most recent and widely read books dealing with race relationships,¹ the author is convinced that the World War "was from the first the White Civil War, which whatever its outcome, must gravely complicate the course of racial relations." He argues that the "basic factor in human affairs is not politics but race," and that since the greatest losses in the recent war were inflicted upon the white race the peoples of color were real gainers from the catastrophe. Moreover, he contends that the most disquieting feature of the present world situation is not the war, but the peace; that the white world's inability to frame a stable and constructive settlement will lead to other "white" wars which will have the effect of keeping brightly burning in the heart of colored races the hope of eventually wresting from the "self-styled" superior race supremacy in world affairs.

This view of a publicist receives able endorsement from certain eminent biologists. The age-long contest between East and West has been waged mainly, they say, along the color line—Persians and Greeks, Parthians and Romans; Turks and Crusaders; Châlons, Tours, Narbonne, etc.—regrettable and wasteful of white stock; but nevertheless necessary and vital in the course of human progress. But an-

*Paper read at the Fourth Annual Meeting of the Southwestern Political Science Association, Dallas, April 2, 1923.

¹Lothrop Stoddard, *The Rising Tide of Color Against White Supremacy*.

other class of wars has been tragic and all but deadly to the parent stock of the white race. That class includes the wars of Europe and America embracing the civil wars of the Greeks and the Romans, Caesar's Gallic devastations, the Medieval conquests in continental Europe and England, the revolutionary wars of France and America, the Napoleonic wars and the recent World War. These were "white" wars and the cumulative effect upon civilization has been bad. For, says Madison Grant,² "If this great race with its capacity for leadership and fighting, should ultimately pass, with it would pass that which we call civilization. It would be succeeded by an unstable and bastardized population where merit and worth would have no inherent right to leadership and among which a new and darker age would blot out our racial inheritance." To avoid this disaster there is but one course to pursue. "Such a catastrophe," to quote further, "cannot threaten if the Nordic race will gather itself together in time, shake off the shackles of internationalism and reassert the pride of race and the right of merit to rule."³

In echo to this clanging pronouncement comes a challenge from across the color line: "The colored peoples will not always submit passively to foreign domination... These nations and races are going to endure this treatment just as long as they must and not a moment longer. Then they are going to fight and the war of the Color Line will outdo in savage inhumanity any war this world has yet seen. For colored folks have much to remember and they will not forget."⁴

In the study of races comparative figures are often illuminating. The habitable area of the earth's surface is estimated at fifty-five million of square miles. Of this area the white race occupies twenty-two millions and the colored races thirty-three; and a glance at an ethnic map reveals the fact that in a race war the colored races would have the strategic advantage.

²Madison Grant in Introduction to *The Rising Tide of Color Against White Supremacy*.

³*Ibid.*

⁴W. E. B. DuBois, "The African Roots of War," *Atlantic Monthly*, Vol. 115, pp. 713-714, May, 1915.

In point of numbers the colored races are even more favorably situated. In all the world there is a grand total of about one billion seven hundred millions of people, distributed according to color as follows:⁵

Whites.	550,000,000	
Colored:		
Yellow.	500,000,000	
Brown.	450,000,000	
Reds.	40,000,000	
Blacks.	150,000,000	1,140,000,000
Grand Total.	1,690,000,000	

Numerically, therefore, the colored races have the advantage over the whites in the ratio of a little more than two to one. The ratio in their favor, moreover, is steadily increasing; because, while the white race doubles in about eighty years, the yellow doubles in sixty, and the black in forty. Before the advent of the white man, nature, through pestilence, flood, famine, and war adjusted the population to the food supply in the regions inhabited by the colored races. But the white man with his soap and civilization has so lowered the death rate among them that he appears to be in danger of being pushed off the earth's surface through sheer weight of numbers. Such facts are common knowledge to colored folk the world round.

All of these peoples came within the scope of the World War, most of them as participants in one way or another. What was its effect upon their spirit?

The Yellows

Consider first Japan: This little nation first challenged the West and became "mistress of its own house" in the Korean affair of 1894-1895. In the following decade she was ready to oust Europeans from China; then came her successful war with Russia, followed by her advantageous

⁵B. L. P. Weale, *The Conflict of Color*, p. 11.

Lotroph Stoddard, *The Rising Tide of Color Against White Supremacy*, p. 6 ff.

participation in the recent war. In all of these undertakings the balance sheet of Japan's war experiences showed clear gains. And since the war "she is watching with delight the exhaustion of Europe" through loss of man power, destruction of productive industries, and the accumulation of debts. Though usually taciturn, her leaders have become emboldened to speak of her national aspirations; inspired by the war's excitement, Japan's bellicose attitude has become more pronounced and the "world dominion" note is more frequently heard. Witness the following quotations:

In the future we must not look eastward for friendships but westward. In them [Russian friends] Japan will find a strong ally. By marching then westward to the Balkans, to Germany, to France, to Italy, the greater part of the world may be brought under our sway. The tyranny of the Anglo-Saxons at the Peace Conference is such that it has angered both gods and men.*

Fifty million of our race wherewith to conquer and possess the earth! It is indeed a glorious problem! . . . how well have done our people! How well have our statesmen led them! No mistakes! There must be none now! In 1895 we conquered China—Russia, Germany, France stole from us the booty. . . . In ten years we punished and retook our own from Russia; in twenty we squarred and retook our own from Germany; with France there is no need of haste. She has already realized why we withheld our troops which might have alone driven the invader from her soil! Her fingers are clutching more tightly around her Oriental booty, yet she knows it is ours for the taking. . . . As for America, that fatuous booby, with much money and much sentiment, but no cohesion, no brains of government. . . . a race of thieves with hearts of rabbits. America to a warrior race is not as a foe but as an immense melon ripe for the cutting.

Then turning his attention to the Pacific, the writer continues:

. . . but the sea means the Western Americas and all the islands between; and with these must come Australia and India. And then the battling for the balance

**Literary Digest*, July 5, 1919, p. 31.

of world power, for the rest of North America.... North America alone will support a billion people; that billion shall be Japanese with their slaves...that continent so succulently green, fresh, and unsullied—except for the few chattering, mongrel Yankees—shall be ours by the higher, nobler right of conquest.⁷

Ravings of the jingoists? Doubtless so, and possibly written principally for home consumption where it is effective in creating among the masses the world dominion attitude of mind. Supported by a united people with whom religion and patriotism are synonomous, Japan took a long step forward during the World War in carrying out her imperial ambition. Although there may be some division of opinion as to the next step in attaining her national ends, a very strong and active group see in the *rapprochement* of China and Japan the means of expelling all the whites from the Far East and thereby beginning the downfall of white world dominion.

While thus quickening the national ambition of her people, Japan is not unmindful of the necessary material preparation for her future role. She is continuing with renewed zeal the carrying out the work of internal development which she had begun before the World War. Her marvelous growth industrially, the organization of labor, the rapid modernizing of her school system, the spread of feminism—these and other significant movements speaks eloquently of the aggressiveness that now characterizes these capable yellow people of the Far East. Since Russia has ceased to checkmate her and Germany no longer stands in her way, Japan is a greater danger to the Pacific interests of her former allies, as they have now come to see, than their erstwhile enemy, Germany, ever could have been.⁸ Japan herself is fully awake to her advantage in world politics, and in the boldness of this knowledge is spreading imperialistic propaganda throughout Persia, Afghanistan, and other portions of the colored world. In order to secure the support of all other colored races in furthering her ambition for

⁷*The Military Historian and Economist*, Jan., 1917, p. 43.

⁸H. A. Gibbons, *Introduction to World Politics*, p. 318.

world dominion she represents herself as anti-imperialist and liberal, ready to encourage the aspirations of all down-trodden peoples—in short, as the true apostle of the much vaunted principle of self-determination.⁹

What has been China's reaction to this world calamity? China, the most beguiled, the most befriended, the most impassive of nations! Will she be partitioned? Will she become Japan's "horse" upon which that nation will ride to world dominion? Is she manifesting symptoms of self-assertion? Or will she remain forever the impassive sea absorbing alike belligerent and friendly invader and continue her national existence whether in storm or calm! What now is transpiring in China has transpired throughout the ages. The World War did not make China's millions "safe for democracy," nor did it bring internal peace and unity. The results were, nevertheless, definite and prophetic of a national greatness yet unrecorded in her annals. The great war drew China further out into the current of world politics and cast up her representative, the strong young Christian statesman, G. Wellington Koo, at the council table of the League of Nations; it cleared the vision of Chinese statesmen who are beginning to see China's problem with an eye single to national interests. They realize now that it is China's own exertions that must save her and not those of America or other powers. She now is aware that national integrity demands that encroachments of other nations upon her sovereign rights must be thwarted. She has discovered the imperative need of recovering her treaty ports, controlling tariffs, withdrawing concessions and freeing herself from extra-territorialities. These are a few of the significant effects of the World War on China and her leaders.

The Browns

India, the population center of the brown world, has approximately three hundred twenty millions of people, two-thirds of the brown population of the world and one-fifth of the grand total. This vast section of brown humanity

⁹*Ibid*, p. 519 ff.

is a seething ocean of social and political unrest. As early as 1906 the national spirit in India was troublesome to England. By 1916, because of international diplomatic complications incident to the war, England was forced to a line of action which resulted in a closer union of Mohammedans and Hindus in opposition to the government. Since that time the threat to England's supremacy has been grave.

India's contribution to the success of the Allies was no small one. To quote B. G. Horniman:

They supported the war by colossal sacrifices... enormous sums were raised for hospitals and the philanthropic side of the war generally. A million and a half of men went to shed their blood on the battlefields of Europe, Asia, and Africa, and even to fight against the Turks, whose Sultan exercises spiritual authority over so many of India's soldiers, and whose allegiance to their temporal sovereign was sustained by the solemn promise made to them that their spiritual interests would not be assailed or allowed to suffer. There is little margin for the taxation of a people so poor, but that imposed was borne without complaint, and one loan after another was raised, while in addition a free gift of a million sterling was made by the poorest to the richest nation in the world.¹⁰

The same author continues:

They [the Indians] were enthusiastic for the war at the outset, the cause stirred their imagination and roused their sympathy . . . and they never wavered in the loyalty of their attitude to the Allies' cause. They believed the war was being waged for the freedom of all, and the reiterated declarations of one British statesman after another and the expressed ideals with which President Wilson came into the war encouraged them in the high hope that their freedom as a full partner in the Empire must inevitably follow the winning of freedom for others by help of their sacrifices.

So, while for the most part they were uncomplaining, they kept up a steady agitation for their own claims. Con-

¹⁰Benjamin Guy Horniman, *Amritsar and Our Duty to India*.

cessions were made. A writer in the *Queen's Quarterly* for December, 1921, states:¹¹

Let us look at the great strides which India has made in the world as a result of the great part she played in the great struggle. The sacrifices which India made in the common cause . . . won for her a new and proud place among the nations which make up the British Empire . . . The Imperial Conference . . . welcomed representatives of India to its council board for the first time in 1917. . . . India, too, is an independent member of the League of Nations; and already at the meeting of the Assembly of the League . . . her representatives have made their voice heard. Like the Dominion Governments, India has now her high commissioner in London . . . commissioned ranks of the army have been opened to Indians and one-half of the posts of the higher branches of public service are now reserved for natives of India.

Many limitations formerly restricting the Indian legislature have been removed. "It now enjoys a very large measure of control over the annual appropriations and over all taxation bills." India has fiscal liberty in relation to other parts of the Empire which she has exercised in a "drastic revision of the tariff" to the great displeasure of certain interests of Lancashire.

But the national ambitions of India aroused by contact with western influences have not been satisfied by these concessions. A writer in the *Asiatic Review*,¹² asks, "What are the motives, conscious or unconscious which prompted India's outburst of generosity?" He replies that she had but one object—"to show her loyalty and to prove what that loyalty is worth. They felt the joy at the opportunity to prove their claim to be regarded worthy members of the Empire" . . . "A relation has been established which can only be incurred with honor between friends and equals."

The masses of India now demand home rule. Since 1917 the nationalist movement has spread with alarming rapid-

¹¹E. A. Horne, *The Present Political Situation in India*.

¹²"India After the War," by E. Agnes Haigh, *Asiatic Review*, N. S., Vol. 5, pp. 415-422, Nov. 16, 1914.

ity. "When," as one writer has said,¹³ "before the end of 1921 it was realized that the Gandhi movement... was spreading alarmingly" the British took measures to uphold the authority of the crown. The writer continues:

It is realized, however, that repression will fail, and that the only way to counteract and discredit the Gandhi movement is for the government of India to convince the people that they are well off and that they are being justly treated under British rule. The agitation for self-government will subside only when the Moham-medans are placated by a drastic revision of the treaty of Sèvres; when Indian tariffs are adjusted in the interest of India and not of Great Britain, and when the Indian people, forced to bear their share of the burdens of defending and maintaining the British Empire, will receive in return full privileges within the Empire enjoyed by British subjects of European origin.

Leadership is passing from individuals to masses. It has encompassed both the radical and the nationalist parties. "One decisive outcome of the war," says a recent writer,¹⁴ "is that both parties, equally out of genuine conviction, stand for the permanent place of India as a constituent part of the British Empire. They desire their country to be on the same self-governing basis as Canada, Australia, and South Africa"... "Great and small, the note of discontent is present in every Indian heart."

The latest, and to England the most disquieting, evidence of this fact is that the warlike Sikhs have joined Gandhi's *Swaraj Sabha* (Self-Governing Society), whose leader, according to Basanta Koomar Roy,¹⁵ "has more following than any other political leader ever had in any country. This makes him the powerful man of earth today... Gandhi-ism has fired the imaginations of the teeming millions of India and has stirred the country to its foundations and is threatening the existence of British rule in India and British supremacy in the East... He is moving one-fifth of the

¹³H. A. Gibbons, *Introduction to World Politics*, p. 504.

¹⁴*The Survey*, Vol. XLIV, p. 676, May 5, 1920.

¹⁵*The Independent*, p. 443 ff, April 30, 1921.

population of the world to a destiny that cannot yet be definitely defined but which is sure to change the color map of the world."

As in India so in Egypt and throughout the brown belt stretching the full length of North Africa. Where there was discontent and dissatisfaction before the war, there is now revolt and revolution. In the ancient land of the Pharaohs British imperialism is deadlocked with Egyptian nationalism. Basing their demands on the doctrine of "self-determination," the "rights of small nations," the "rights of oppressed nationalities" they have continued their demands from the time of the meeting of the Versailles Conference until recent events when Great Britain was forced to accede to their claims and establish the Egyptian kingdom under King Fuad. This regime is supported by a combination of political parties under the nationalist banner.

Likewise, in unhappy Korea where "militant nationalists prefer death to living under Japanese rule;"¹⁶ among the desert peoples of Asia and Africa; in Syria, in the plateaus of Tibet and the sands of Sudan; among the Arabs of Hedjaz—who made possible British conquests in Palestine—have been registered in the pulse beats of the brown man the throbs of democratic aspirations radiating from the shock centers of Western Europe where Nordic nations are destroying a common civilization and giving the lie to their preachments of the brotherhood of man.

The Reds

The red men live south of the Rio Grande river. They constitute about forty millions of the seventy-five millions below that line.¹⁷ Their country is governed by the pure white race, who, when they invaded the new land, did not destroy the Aborigines but inter-married with them. There is consequently today no color line or race problem in any of the Latin-American countries. Neither is there any such aversion to the Chinese, Japanese, or East Indians as is

¹⁶Henry Chung, *The Case of Korea*, p. 189.

¹⁷Wm. W. Sweet, *A History of Latin-America*, p. 225.

shown by North Americans, Australians, and Dutch. Distinctions are of class or rank rather than of color.¹⁸ Eleven of the Latin-American states were represented at the Peace Conference, six were invited to accede to the League Covenant. This was the first time Latin-America took a place in world affairs. The influences of the war period drew the Latin-American nations closer together and gave a tremendous impetus to their economic development. There were also political and spiritual results, and a closer bond of friendship created for their neighbor of the North. But these results though national were not racial. The Indian, mestizo, and zambo are still practically serfs. The hybrids are still increasing and the Indians decreasing. Although the future of the Latin-American states seems to lie with the mestizoes, the World War cannot be said to have affected favorably or unfavorably the Red man or the Latin-Americans of mixed Spanish and Indian birth.¹⁹

The Blacks

There are approximately one hundred twenty millions of blacks in Africa south of the Sahara, twenty-five millions in the Western hemisphere, and three millions in Australasia. The most intelligent and forward of these people, likewise the most restless and race conscious, are in the West. Those of the Far East, because of their primitive condition, are negligible. Those of Africa are ignorant and undeveloped—some say because of inherent incapacity, some, because they have been out of touch with civilization and not in direct line of human progress. As a result of the powerful human forces brought to play upon Africa during the war, however, her native people are becoming a part of the moving world. The "white" contacts which they had begun to form in the North and the South as against those of the penetrating Browns and Yellows from the East have become definite forces competing to win these millions to their respective type of civilization. Viewed in connection with

¹⁸S. Guy Inman, *Problems in Pan-Americanism*.

¹⁹Wm. W. Sweet, *A History of Latin-America*.

the awakened spirit of the blacks in Africa, it is this aggressive interest in them on the part of the white world and the colored world that gives immediate significance to the awakening. Knowledge of the outside world has penetrated the consciousness of the native African. He is expectant. He desires that good thing. Whether it be garbed in the robes of Mohammed or those of the Christ is a matter of indifference to him. Africa is the battleground of the two cultures. And to these black folk, who are preeminently fighters, the militant spirit of Islam makes a more ready and powerful appeal than the gentle, peace-loving moral standards of Christianity. While the war can hardly be said to have created a race consciousness or a national spirit among the independent tribes of Africa, it has discovered to themselves and to their dark skinned kinsmen of the East their potential importance in a color line conflict.

A lengthy recounting of the effects of the war upon the American Negroes would be inappropriate in this paper. Yet, because of our traditional indifference toward them and the problems their presence creates, it is highly probable that the average intelligent American white man has more specific knowledge concerning aspirations of yellow peoples than concerning those of the blacks among whom he has spent his life. On account of their rapid development as a race during the past sixty years, within which time illiteracy decreased among them from 90 per cent to 30 per cent, the outbreak of the war found them in position not only to render valiant service to their country, but also to reap incalculable benefits from their experiences in it. As a result there is a solidarity of sentiment and a race consciousness which, without such experiences, would have required generations to produce. An eminent Negro educator in June, 1920, stated the following in substance to the writer:²⁰ "The World War was a complete vindication of the American Negroes. Their historical background was such that they have been compelled to occupy a degraded position. They have been reared to believe, and they tacitly ac-

²⁰Dr. G. Imes, Tuskegee, Ala.

cepted, the white man's theory of supremacy. While the thoughtful among them questioned this theory, they knew it had never been disproved. But when our government drafted black boys and white boys alike, subjected them to the same training and required of them similar service as soldiers, it is of record that in every phase of war work the Negroes equalled, and in some instances surpassed, the Whites. Behind the lines, too, there was just as splendid an example of patriotic devotion." Whether this is a true statement is not in point. The negroes of America are one in their acceptance of its sentiment. To their minds "white supremacy" is dead, killed by the World War. All who do not accept this evident truth are enemies of the race's best interests and will be so regarded. They fought to save democracy in Europe and are ready to fight to enjoy its social, political, and economic benefits in America. They do not wish to migrate to Africa. They have earned the right as American citizens to live wherever they please and they propose to exercise that right. They "thank God that the Negro is a hundred per cent American. The red flag of bolshevism and anarchism has never disgraced the cabin door of a black man and [they protest] never will."²¹ As the problem is seen by their spokesmen the following quotations are pertinent:²²

This war has given the black man a chance,—it has opened the door of American privileges and rights that have so long been barred—I say, boys, step off . . . step off and march valiantly on to those good places in life that now await you.

And again,

It is this unprecedented synthetic group of black men sailing the sea of darkness on a mission concerning the vital interests of Englishmen and Americans who had misused them for centuries, and concerning beloved France who laid first the real claim for honor and recognition and equality for the American Negro. . . . The American Negro felt in his heart that all

²¹A. M. Moore, *Survey*, XLIV, May 15, 1920.

²²W. E. Seward's a book of Poems, *Negroes Call to the Colors*.

America ought to forget her prejudices . . . The Negro knew that he could do one thing as well as the best of men . . . he could die grandly to make the world safe for democracy. For we of America must remember, in all our getting on and up in the world, that as a psychological weapon, the bristling bayonet was incomplete until a stalwart desperate Negro, a black Negro American citizen, got behind it to fight, not for his gain, but for the uplift of the masses of humanity. The war is over. It was a still small voice within that told the Negro hosts: "As this hath been no white man's war, neither shall it be a white man's peace."

And the writer adds ominously, "As the Negro becomes an international problem, no single section of the country can be entrusted with the administration of matters pertaining to him."²³

That the World War stimulated the national spirit among the colored peoples is a most evident fact. It intensified imperialism in Japan; it appears to have started China on the road to national unity; the brown peoples of India and Africa have become emboldened to strike for their independence; the blacks of Africa have risen perceptibly in their own estimation and seem destined to play an early part in the future of their own country; while their brothers in the West have become racially proud and self-assertive. Whether this "rising tide of color" is sinister, as some would have us believe, is a charge worthy of thoughtful consideration. Whether it shall become so may depend entirely upon the spirit with which it is met by protagonists of the present world order. East is still East and West is still West, but the twain seem predestined to meet. What shall be the motive and the attitude of mind of each when the meeting takes place?

A few months since a son of Cathay stood with a college president before the student body of a Southern institution. In the possession of the offspring of modern China were the records of his family for forty centuries. But he had sojourned in the West. With the culture of ancient China there were commingling in his soul the influences of our Christian civilization. His mission to the Southern college

²³Kelly Miller, *A History of the World War*.

was to stimulate North American Christian students to assist in redemptive work among the people of South America. May we not see in the spirit of coöperation manifested in this incident a suggestion which is prophetic!

DIVISION OF LATIN-AMERICAN AFFAIRS

EDITED BY IRVIN STEWART

University of Texas

CONSTITUTIONAL INTERPRETATION IN MEXICO*

HERBERT INGRAM PRIESTLEY

Bancroft Library, Berkeley, California

The once unique feature of the governmental system of the United States whereby the Supreme Court asserted the right, in which it has been sustained by popular opinion, of passing on the constitutionality of the laws passed by Congress, has its interesting counterpart in the constitutional provisions for the powers of the judiciary in Mexico. Like the United States, Mexico is governed under a drafted constitution, but not under basic laws which developed from the crystallization of customs into immunities from executive aggression, guaranteed by separate and progressive enactments such as constitute the bulk of the English constitution. This accidental evolution is the more remarkable when it is remembered that the Mexican Constitution of 1857 is not only a drafted constitution, but was drafted in the midst of political and military strife, and so was never ratified and accepted through the conscient will of the citizens, but promulgated, as a bolster to a government aspired

*This article is a study in brief of Emilio Rabasa's *El juicio constitucional, origines, teoría, y extension*, Mexico, 1919, 345 pp. Señor Rabasa is the acknowledged dean of the Mexican legal profession; his numerous writings on history and jurisprudence evince a masterly conception of the true theory and actual form of Mexican government; his book on the theory and practice of judicial interpretation in Mexico and the United States should be of interest both to teachers of government and to juris-consults who have to deal with litigation before the Mexican Supreme Court or with the relationships between the two countries. This article is a free translation of parts of the book selected to set forth in briefest form the statements and opinions of the learned jurisconsult without intermingling obvious glosses which will readily occur to the reader.

to by a faction and acquiesced in more or less temporarily by an unwilling and disfranchised minority.

The enactment of a drafted Constitution by the United States, and the ratification of that document as a governing principle whereby the citizens of separate and independent political entities bound those entities into a union afterwards established as indissoluble, presents a further marked contrast to the Constitution of Mexico. In the latter we have not only no process of ratification, but a development of a fictitious unity of fictitiously separated states into a mechanism of union created by political idealists who had had no experience in either law framing or law enforcing, let alone law interpretation; who had none of the traditions of protecting the individual from executive encroachments through the interposition of the judiciary; who never had evolved, within an historically significant past, any tradition of common law. Here then it is none the less remarkable that the principle of judicial interpretation of the laws should have followed slowly the example of the United States in the development of a theory which not only limits the encroachment of the executive power, but passes at once to the province of interpreting the constitutional validity of legislative enactments.

This development has been slow, taking into consideration the span of years since emancipation. In the Mexican Constitution of 1857 the theory is ably expressed, and if it had not been for the limitations imposed at the beginning, it is possible that judicial interpretation might have become as full-fledged in Mexico as it has in the United States.

The beginnings of constitution making in Mexico were obscure, hasty, and ineffectual. The notable Constitution of 1812, framed for the revolutionary Spanish empire, and promulgated by Peninsular authorities, contained no germ of expansion of scope through judicial interpretation. Its political history, and that of the Revolution of Independence, made this Constitution a despised and neglected guide even in the realm of political theory when the republican organization of Mexico was first framed in 1824. The same may be said of the crude and insufficient Constitution of

Apatzingán, enunciated by Morelos and his adherents in 1814, but never put to practical test and deserving a place in constitutional history only as a monument to the incipient aspirations of a nascent theory of representative government.

When the first real Mexican Constitution, that of 1824, was promulgated, there was among Mexican statesmen only scant knowledge of the American Constitution, upon which it was based. De Tocqueville's notable exposition, *Democracy in America*, had not yet been published, and there was no Spanish edition of the *Federalist* to guide them.

Hence the Mexican document failed to enunciate clearly the doctrine of constitutional supremacy upon which the interpretative power of the American Supreme Court is based. Though the Constitution of 1824 gave the Supreme Court power of decision in cases between states and general control of cases in which the national interests were involved, there was only vague and incidental reference to the power of that body to rectify violations of the Constitution itself. As a matter of fact, the framers of that organ had no cognizance of the principle. The stormy history of the first Republic in Mexico, with its reversion to reactionary centralism in the Constitution of 1836, and its establishment of the anomaly of a "constitutional despotism" under Santa Anna in the Constitution of 1843, offered little opportunity for the development of constitutional interpretation.

Yet there was one faint glimmer. In 1840, when the "Seven Laws" or Constitution of 1836 were still the supreme charter, a commission was named by the Congress to suggest constitutional amendments. During the deliberations of this commission a solitary vote was cast in favor of suppressing the ridiculous Conservating Power—a committee of five as a check on the several branches of government set up by the "Seven Laws"—and bestowing its functions upon the Supreme Court. The specific proposal was that the latter body should have the power, whenever called upon to do so by the Chief Executive or a certain number of the Deputies or Senators, to declare any law unconstitutional. While this proposal, which persisted in various projected

constitutional reforms until the Constitution of 1857, indicates a tendency to repose confidence in the supreme judiciary, its form makes patent the fact that the American procedure of constitutional interpretation was still unfathomed.

Nor was there, in Mexican law making, anything approximating a desire to curb the executive or the legislative power until the idea appeared in a proposed constitution for the State of Yucatan formulated in 1840. In this document first appeared a brief list of guarantees of the individual comparable to the so-called Bill of Rights comprised in the American first ten constitutional amendments. These were a direct reaction to the current hazards of life in an anarchy-torn land where despotic encroachments were of daily occurrence, and not a theoretical formulation of principles based on study of foreign documents.

This projected Yucatecan Constitution proposed in its introductory passage that the Supreme Court should give succor (*amparo*) "in the enjoyment of their rights to all who might ask its protection against the laws and decrees of the legislature in contravention of the constitution, or against the procedure of the government or the executive, when the latter had infringed the Fundamental Code." In each case the action of the court was to be limited to reparation of the grievance whereby the laws or the constitution might have been violated. Here for the first time appears the word *amparo* in Mexican legislation, a word since used to designate the process whereby judicial interpretation of the laws and Constitution of Mexico is accomplished. It was suggested that this aid should be rendered by judges of the courts of first instance, in forgetfulness of the fact that it was through the lower courts that violations of personal guarantees were usually effected by executive and legislative encroachments. At any event there was no Yucatecan Edward Cope to defend personal guarantees, and the suggestion did not prevail.

Again, when the Constituent Congress of 1842 met to frame a new Constitution, its committee of seven delegated to report a project contained a minority of three federalists.

These three men, before they were disbanded by the disgruntled centralist Santa Anna, offered a suggestion for constitutional interpretation which became the model used in the Constitution of 1857.

Their proposal was posited upon the hitherto unacknowledged basis of individual rights. The declaration was made that "The Constitution recognizes the rights of man as the basis and object of social institutions. All laws must respect and assure these rights, and the protection conceded by them is equal for all individuals." It was also declared that "the Constitution authorizes the following guarantees for the rights of man." Then followed the guarantees, under penalties for which there was to be no amnesty or indult. "This project fixed the intervention of federal justice as the real guarantee of individual rights," but determination as to the constitutionality of a law was made the function of the Chamber of Deputies or of the legislatures, according to whether the law was federal or local. This proved that the proponents of the amendment were ignorant of the American system, and did not understand that the Supreme Court, in reviewing a complaint alleging violation of personal guarantees, would often necessarily have to pass upon the constitutionality of laws which might permit an aggression. As the Congress was dispersed by military revolts engineered for Santa Anna's benefit, the minority report was lost sight of, but when the political pendulum swung toward federalism in 1847, the Constitution of 1842 was amended by an *Acta de Reformas* which was the exclusive work of Mariano Otero. These reforms or amendments were intended chiefly to affirm and establish personal liberties by fixing limitations upon the arms of the government as the basis of social security and public peace.

The preamble of Otero's amendments recognized the importance of the functions of the judiciary in phrases which exalt it, but still leave its field of operation narrower than that of the judiciary of the United States. There is history, as well as political science, in the passage at point:

Frequent attacks by the Federal and State authorities upon individuals make urgent the demand that

when the Federation is re-established, citizens shall be given a *personal guarantee*. This guarantee can be found only in the judiciary power, which is the normal protector of private rights and hence the only suitable one . . . In North America [the United States] this saving power is derived from the Constitution, and has produced the best of results. There the judge has to submit his decisions first of all to the Constitution; hence, when he finds this in conflict with a secondary law, he applies the former and not the latter. Thus, without making himself superior to the law nor placing himself in opposition to the legislative power, nor annulling its enactments, he makes it impotent in every case wherein it might work injustice. A similar institution is by all means necessary among us. . . . It is also necessary to extend a little further the judicial power of the Union . . . especially to raise the condition and assure the independence of a tribunal which is called upon to play so important a part in the political field as does the supreme judicial power.

The amendments themselves contained two provisions looking toward the end aspired to in the above quotation. One of them provided that the rights of man as recognized in the Constitution should be protected by a law which should fix the guarantees of liberty, safety, property, and equality enjoyed by all inhabitants of the Republic. The second declared that the federal courts should aid (*amparar*) every inhabitant of the Republic in the exercise and preservation of rights conceded by the constitution and the laws, against every attack upon him by the executive and legislative authorities of the states or of the nation; the federal courts being limited to rendering their protection merely in specific cases under cognizance, without making any general declaration concerning the law or the act which motivated it.

Though the *Acta de Reformas* was not put into effect, the proposals of Otero, handed down to the framers of the Constitution of 1857, gave to the institution of judicial interpretation of the Constitution the character it still preserves, namely, that of being solely intended to protect the rights of the individual. As a result, the interpretative power of the Supreme Court in Mexico remains deficient and incomplete. His fundamental ideas, as adopted by the

Constituents of 1857, were as follows: To make a complaint against an infringement of personal liberty the subject of a new case and not the basis of an appeal (*recurso*); to give competence in such cases to the federal courts only; to prohibit any general declaration concerning the law or the violative act. He also framed the brief and simple juridical formula which gave the procedure its masterly form. The framers of the great charter of 1857 had the good judgment not to modify what they could not improve.

They were versed in the method in vogue in the United States, though they had a difficult task to prevent the adoption of a jury decision in cases of interpretation. The Constitution of 1857 was really a documentary protest against the aggressions of Santa Anna's dictatorial exercise of power which had given rise to the Revolution of Ayutla (1853) and called the Congress into existence. The whole burden of the enactment is on the rights of the individual.

The method of judicial interpretation of the constitution was taken directly from the Constitution of the United States. The constitution, the federal laws and international treaties were declared the supreme law of the land, superior to all state laws, and the authorities of the latter entities were to be guided by them. The Federal Supreme Court was given exclusive jurisdiction in all cases involving the supreme laws. This was to be done in the manner suggested by Otero in his *Acta de Reformas*, but with one essential modification. Any local or federal law contrary to the constitution as violative of an individual right was to be declared null. This had previously been done either by the unlamented *Poder Conservador*, by the National Congress against a state law, or by a majority of the state legislatures against a federal law. These modes of procedure had been to no little degree the cause of the serious political conflicts so vividly recalled in the preamble of the proposed Constitution of 1857. The new procedure as adopted was to carry complaints for violation of personal rights directly to the federal courts; the judgment was to be rendered as affecting that private interest, and sentence was limited to the case in hand, giving protection against the violation to the plaintiff, but without declaring the nullity of the law. Going a

step farther than Otero, protection was offered not only against legislative and executive aggressions, but against those of the judiciary as well.

Here the absorption of the American system ended. Provision was made for only two broad classes of cases, protection of individual rights, and settlement of controversies between the federal and local authorities.

The limited character of Mexican constitutional interpretation is seen from a brief analysis of the proper attributes of the judicial power. In the United States, the Supreme Court has two kinds of jurisdiction. In the first, it has cognizance of controversies between states of the Union, of all cases which affect the nation as a whole or which concern its standing abroad. In such cases it has the ordinary judicial powers, the only difference is in the high or exceptional character of the litigants. The second class of jurisdiction is the power to maintain the integrity of the supreme law, regardless of the category of the parties to a suit. This is the political attribute of maintaining the very mechanism of the government. In this second function, the Constitution of 1857, declaring the extent of the jurisdiction of the Supreme Court in cases the essential whereof is the matter involved (not the category of the litigants), descended to enumeration of specific kinds of cases instead of voicing the general principle as the American Constitution is usually held to do since the interpretations of Chief Justice Marshall.

This was deliberately done, for if the Supreme Court had been given jurisdiction in *all* cases wherein a Constitutional point could be raised, it would have been used universally, resulting in wide extension of the appellate power, and causing protraction of every litigious process. But the procedure, by the fact of enumerating the cases to which it should be applicable, and by giving the process origin in the Supreme Court and not appellate character, attained the status of a special judgment, not as a writ of error but as a method whereby to check abuses, to prevent violation of the supreme law by impeding execution of an order or a law issued even by the highest national authorities. This is the essential character of the process of *amparo*.

In practice the principle is applicable only by regular procedure. The suit must be begun by petition of one of the parties; a violator of one of the personal rights enumerated in the Constitution must be alleged—hence all other violations are outside its purview.

The theory on which the judicial power rests gives it the essential function of preserving the popular sovereignty by interpreting the Constitution. In this it must keep each of the branches of government from violating personal rights, keep each of them from invading the functions of the other, and preserve the legal balance between the federation and the states. Article 101 of the Constitution of 1857 gave the federal courts the power to so settle controversies arising:

I. Through laws or acts by any authority which violate individual guarantees;

II. Through laws or acts of the federal authority which vulnerate or restrict the authority of the states;

III. Through laws or acts of the latter which invade the sphere of the federal authority.

Thus *fracción I* leaves unprotected many personal rights emanating from the Constitution because they are not enumerated in the twenty-nine articles of Title I. Also, mutual invasions by the branches of government are left unchecked unless they violate one of the twenty-nine personal guarantees. Thus the rôle of the supreme judiciary is limited in three ways: by the deficiency of the system, by its limitation to remedy of the twenty-nine enumerated guarantees, and because it was not given effective jurisdiction in cases involving conflict of powers. The court itself added a fourth restriction by declaring that laws may not be declared unconstitutional unless their execution violates individual rights.

The first of these deficiencies of the process of *amparo* is imposed in article 102 of the Constitution, wherein it is prescribed that judgments of violations of the Constitution must arise "upon petition of the party aggrieved by means of judicial procedure." Hence, when there is no aggrieved party there can be no judgment, even in case the Constitution is violated.

Of course in such instances there is general injury to

sovereignty; often a limited number of person is injured; but when the injury is impersonal, indefinite, or indirect, there is no remedy. For instance, article 31 requires Mexicans to pay taxes for support of the public expenses of the Federation, and of the State and municipality within which they reside, in equitable and proportional manner. Now if a law imposes a tax for public works in any city and provides that the tax shall be collected throughout the Republic, every tax-payer is injured, and there is cause for judgment, because there is a matter to be judged and a legal complainant; but if the law merely ordered a municipal expenditure, taking funds from the federal treasury to pay for it, the violation of article 31 is identical, yet the injury is indirect and is not inflicted at the moment of the collection of the taxes; in such a case the judgment of amparo does not lie. This happens when the Congress votes Federal expenditures for the improvement of the national capital. Infractions of this character have their remedy only in political action.

Again, while the judgment always lies in cases coming under *fracción* I of article 101 (which enumerates the so-called individual guarantees) the same is not true of cases which fall under *fracciones* II and III, wherein it is provided that invasions of State rights must be shown not only to be such but also to be injurious to some person. If a Federal law imposes a tax on State receipts it may be resisted by the local governments, but it cannot originate a suit of amparo because it affects everyone and no particular person especially. In such a case the only remedy is an election, which means usually a revolution.

The amplitude of the process and the sacredness of the Constitution might have been increased if another *fracción* had been added to article 101 to include cases of excess of constitutional powers. Thus more personal rights would have been secured, and the Supreme Court would have attained the power of preserving the political equilibrium. Even so, however, the process of amparo would not have included cases neither violative of individual guarantees nor invasive of the faculties of one political entity or de-

partment by another. But mere enumeration of cases would not have sufficed to establish the Federal court in the rôle of protector of the Constitution. It would have been better to have made the article not of three *fracciones* but of one general expression giving the Supreme Court cognizance of *all* controversies under laws or by acts of any authority whatever which violate a constitutional precept to the injury of an individual. Thus the process of *amparo* would have received the full amplitude which its character should permit and which the supremacy of the Constitution demands. It has been held that *fracción* I of article 101 cannot be extended to *all* cases of violations of personal rights, but only to those designated in the twenty-nine articles. That is, the process of *amparo* does not cover "all the guarantees authorized by the present constitution," for "individual guarantees" are not "rights of man," but only methods of securing the latter. It is not guarantees, but rights, which are enumerated in the twenty-nine articles, and the only guarantees vouchsafed for these are designated in articles 101 and 102, which provide for the writ of *amparo*.

It was once the fashion to attempt the extension of the process of *amparo* by alleging the doctrine of the innate incompetence of any arm of government to execute any measure not in accord with the Constitution. So, if any order or law infringed it, such act or order violated some personal right without competent authority and the writ of *amparo* was held to lie, not because of the initial infraction, but because of violation of article 16. This line of reasoning would have brought every infraction of any article of the Constitution under the violation of personal guarantees. It was due to the legal perspicacity of Vallarta, president of the Supreme Court, that this legal fiction was rejected. He recognized the narrowness of the provision for this process, and sought to remedy the defect by permitting it to lie when based "on the agreement of the articles of Section I, Title I, with any others which explain, declare, complement, amplify or limit these, or have necessary relation with them, provided attempt is not made

to create guarantees not declared in the Constitution." This interpretation led to no practical result. If an article of the Constitution not declaring some personal guarantee were infringed, there either was or there was not a violation of some personal guarantee. If so, there was no need for Vallarta's extension theory; if not, the writ of amparo did not lie. Hence Vallarta's doctrine did not amplify the scope of the process, and the lack which he lamented continued to exist.

It will be seen from the foregoing that Vallarta's estimate of the writ of amparo, as being based on an improvement on the English-American writ of habeas corpus arises from his misconception of the latter process. The writ of habeas corpus is not interpretation of the Constitution, but a guarantee of personal rights; but the writ of amparo is properly to be compared with the American power of the judiciary to decide whether a law is constitutional or not, under which any administrative act or court order violates the rights of any one. Amparo is not properly derived from habeas corpus, has indeed little in common with it. The latter process was in vogue in America before the United States Constitution was framed, and was left untouched by it. It was unknown in Mexico, where the Constitution of 1857 created the writ of amparo as a protection for all the rights emanating from its precepts. The United States court developed the practice of constitutional interpretation, in addition to the writ of habeas corpus, for all cases arising under the constitution and laws. The purpose was the same in both constitutions; in the American document a general expression giving the power its widest, universal application was employed, while the Mexican Constitution, by enumerating the motives of the federal jurisdiction, left outside of its competency everything not enumerated. This is the reverse of an enviable advantage.

The evils which emanated from the operation of the writ of amparo were numerous. It seemed from its beginning to be applicable exclusively to the protection of the individual against aggressions by governmental agencies, espe-

cially those of the lower ranks. The reglamentary law of amparo of 1861, which served principally as the defense of citizens against illegal acts by military chiefs and governors, was the basis upon which the organic law of amparo of 1869 was framed. In the interval, the application of the writ of amparo had been intermittent because of the political exigencies of the French intervention and the subsequent two years of disorder. Hence the new law was bound to contain an inherent misconception.

This was manifested in the fact that the procedure providing for suspension of the administrative act complained of was phrased in such general terms that what was intended to be merely an exceptional recourse at law became regular and habitual. That is, in Mexico constitutional interpretation became in usage almost the exact parallel of the writ of *habeas corpus* in the United States. Inferior judges felt obliged, as a matter of responsibility, to issue the writ so frequently that it became the habitual weapon of all complainants, merely upon their petition. Thus the writ became a means of applying urgent remedy in small cases, its higher purposes being overlooked.

After the restoration of the Republic in 1867 the country lived in a dilemma fatal to a constitutional régime; on the one hand was the law of amparo, which protected constitutional guarantees; on the other, the laws which suspended these guarantees and gave to the executive extraordinary powers which effectually annulled the Constitution and the laws. From the president down to the smallest chief of a military detachment, all executives looked upon their powers, legislative as well as administrative, as matters of personal judgment. Society acquiesced of necessity, and the suspension of the established order was converted into an institution. The local authorities armed with the law of suspension of guarantees, were opposed to the inferior judges, armed with the writ of amparo. In other lands, such a situation would result in appeal to the officer of the next higher category, but in Mexico these were usually themselves involved in or originators of such local disputes, so that appeals to the process of amparo came uni-

versally to be made to the chief federal authority. Thus ensued a conflict between the local authorities on the one hand and the judges and complainants on the other. The struggle took the form either of completing an act of aggression before the writ could be served or of obeying it in specific instance only to violate it in another, or of committing a worse affront to nullify the remedy applied to the original one. Thus the process of amparo became an habitual part of every case at law; then the argument against the amparo was that it was invoked against the execution of a law which Congress had enacted. Should Congress be appealed to to enact a law suspending its own legislation? This obvious absurdity was made the basis for an argument that the writ could not lie against the promulgated law; thus the Constitution, which makes no provision for suspension of guarantees, but does provide for judgments against the laws, was subjected to the self-interested interpretations of lawyers and judges.

The application of the writ to suspension of administrative acts was extended under article 23 of the law which says that "the effect of a sentence which concedes amparo is that things shall be restored to the condition in which they were before the Constitution was violated." Hence every act which prevented this should be suspended, and the meaning of the phrase was unduly extended to include suspension of acts which might make the restitution difficult.

As to acts violative of laws, article 3 of the law is not clear. Under the meaning of articles 101 and 102 of the Constitution of 1857 the effect of a judgment conceding amparo is to "annul the violative act with respect to the plaintiff," that is, if the act changed the condition of the person or the thing, either one must be restored to the condition prior to the consummation of the act annulled. This annulment is determined in law by the mere federal judicial sentence, without intervention of any executive authority; this is true even in cases which do not have any connection with the laws. For example, an amparo against a judicial or an administrative act does not require the revo-

cation thereof, this generally being legally impossible for lack of jurisdiction, and an absurdity if applied to a legal decision already annulled.

But the law was understood to mean that grant of amparo meant setting the prisoner free, returning property sequestered, as immediate effects of the sentence, though this is possible only in certain cases. That is, the Constitution was subjected to construction in the light of the law of amparo, instead of *vice versa*; it was argued against the application of this law to the interpretation of others that if it were done, the Congress would be obliged to repeal the violative law in obedience to the judgment of the court. Another untenable argument based on impossible consequences was that even though the law attacked were nullified with respect to one complainant it still had general effect, as for instance, if a local law were to close the highways by imposing restraints on travelers, any person benefited by a writ of amparo against this law could not use the writ to prevent being restrained at every one of the numerous places on the highway where the local authorities might try to enforce the law. All such objections vanish when proper respect is shown for the Constitution and for court orders sustaining it; for though the decision favoring a complainant has judicial effect only in his case, the constitutional effect should be general annulment of the law through lack of future application. But unfortunately neither the laws nor illegal executive acts have ever been prevented by orders of the courts. Men have been forced into the army from time immemorial, even under the Constitution of 1857. Although the court always granted amparo, the practice continued in use, until the Code of Civil Procedure came to recognize it as an institution by declaring that no application for amparo should be valid against forced enlistment unless made within ninety days!

The Supreme Court during its best days began to build up a jurisprudence and an interpretation of the Constitution by the establishment of precedents which it observed in rendering judgments. It had ample scope of jurisdiction, being aided by the permanency of tenure and the high

character of the judges, for, the chief justice being the legal ad interim successor to the presidency of the Republic, the personnel was well chosen. If this had continued, a jurisprudence might have grown up in the federal courts which would have imposed itself in state and local courts by the repetition of decisions which established doctrines, principles, interpretations. But such consuetudinary law was checked and made artificial by the Federal Code of Civil Procedure, which contains a section dedicated to laying down rules for the development of a jurisprudence. Five uniform successive decisions are prescribed; district judges must conform their decisions thereto if they were approved by nine or more votes. Litigants may plead the force of such decisions and the courts must pass on the plea. This is a legal artifice to give respectability to decisions, a ridiculous regulation to fix what is customary and emanates from nature.

Another powerful influence destructive of the formation of a jurisprudence has been to rush into new legislation whenever a lack has been felt, instead of waiting for interpretative decisions by the courts. The removability of magistrates tended to lessen respect for court opinions when the law reduced their terms to six years and provided for renovation of one-third of the personnel every two years. Furthermore the conditions under which they were elected deprived them of fundamental jurisdictional respectability.

The insistence on respect for court decisions does not mean that the force of precedent need become so rigid as it is in the United States, for this element, successful as it is among the Anglo-Saxons, really smothers the scientific spirit, destroys the incentive to study judicial problems, and reduces the position of the lawyer by eliminating him as an influence in the investigation of principles, and closes the door to all advance in the field of law. The Latin conception of justice is inseparable from the notion of law (*derecho*), in the name of which we judge the laws and analyze decrees of court, not to find in them a legal truth established, but to estimate their wisdom with the conscience of our spiritual liberty to criticize, and the legal faculty

of combatting them in future cases. Perhaps our conception of judicial institutions, which subordinates the advantages of practical order to scientific liberty and study of theory, makes us idealists; and perhaps this is not foreign to the bad administration of justice in Latin countries; but other countries with inherited Roman traditions have demonstrated that love of the scientific ideal has not prevented proper organization of justice. The law of precedent, which is an extension of the common law, may become too rigid and fixed, as in American penal law, wherein usages are retained which belong to dead ages. But between invariable precedent and disdain for it there is a mean of respect for court decrees which insures their fulfillment. What authority sanctions becomes perdurable principle. Over such decisions the scientific spirit may exercise influence to clarify old truths or illuminate new principles.

Whatever reduces the standing of the Supreme Court lessens the efficacy of constitutional interpretation as a protection of the individual or a guarantee of governmental order. Not only has it been here shown that the Mexican institution is narrower than the American, that interpretation has not expanded it, that one clause of the organic law establishing it has been inoperative (hence it cannot be invoked against inoperative laws), that it has been reduced to mere private importance instead of serving as a means for constitutional reconstruction, and that it finally came into discredit in a losing fight with arbitrary abuses when even the organic law took the side of violence. Not only this from the outside, but the Court itself has committed errors and faults which have militated against its own prestige.

The Constitutional provision that the Chief Justice should serve as putative vice-president of the Republic was intended to relieve the Chief Executive from inquietude from an ambitious confrère. Not only did the measure fail to provide him this desired security, but it tended to give the Chief Justice political aspirations and to draw the associate justices into partisan politics. When the Conservative re-

volt under Zuloaga drove Comonfort from the presidency, Chief Justice Juárez assumed the Liberal presidency pro forma in 1857, and retained it in three elections thereafter. At his death in 1872, Chief Justice Lerdo assumed the office by right, and was subsequently elected. Thus two cases occurred in which a political future was the logical climax of judicial service. Again, Chief Justice Iglesias thought to wrest the presidency from Lerdo, being prevented only by the irruption of the military hero Díaz into the political arena. This predisposition to politics lessened the respect in which the Supreme Court should have preserved itself as the citadel of abstract justice.

The development of the false theory that the Court could set aside laws because of the incompetency of their origin caused another set of difficulties. The theory was that the federal justice had the power to examine the origin of any governmental agency whatever, for, if its origin be illegitimate by any legal vice in the manner of its creation it is incompetent to issue orders, these being unconstitutional. An instance occurred in 1874, while Iglesias was Chief Justice. Certain hacendados of Morelos prayed for amparo against local taxes, alleging that the law imposing them was framed by an incompetent legislature because that body, in order to obtain a quorum, included one member whose credentials should not have been approved. Furthermore, the governor who promulgated the law had been elected under a new Constitution illegally proclaimed. The Supreme Court in order to grant the amparo was obliged to examine the acts of the legislature both as an electoral body and as a constitutional assembly. This it did, even after the district judge had denied it. The astonishing thing was not so much the grant of the amparo as the fact that the Court declared that it respected as *unrevisable* the acts of the national electoral colleges "with respect to elections of their own members only." That is, the Court held that it had the power to annul a Congressional election (if that should be necessary, the legislatures having given no majority) of the President of the Republic, or of the magistrates. Four of the judges even declared against even the limitation

of authority to review elections to Congress, but professed the right to examine the origin of any public functionary, high or low, and depose him if his origin were illegal. This was in effect to resuscitate the old discredited Poder Conservador of 1836!

President Lerdo remonstrated; the authorities in danger in May, 1875, issued a decree making irrevocable the decisions of electoral colleges. The Court replied in August by a decision declaring the State authorities of Puebla illegitimate, basing its action on its alleged duty to settle controversies concerning the competency of officers who functioned without legal investiture. When in 1876, in the midst of the Tuxtépec revolution under Díaz, Lerdo was declared by Congress to have been re-elected, Iglesias attempted to invoke this theory to oust Lerdo. He launched the Plan of Salamanca, assuming for himself the presidency and rejecting Lerdo for alleged electoral frauds. This use of the process for personal ends reduced the prestige of the court among the legal fraternity and politicians alike. It was seen that an aggressive Supreme Court, made so by political ambition, was a danger. Even the high character of Vallarta, the new Chief Justice, could not remove his office from political suspicion; he felt obliged to renounce his post because of this, and thereafter the function of substituting as President of the Republic was taken from the Chief Justice by Constitutional amendment. The theory of power to decide the competency of origin of governmental bodies fell into disuse, though the fear that it might at any time be revived still existed. The government felt it necessary to fill the court with confidential friends; this familiar relationship destroyed both the independence and the prestige of the Supreme Court under Díaz.

Reference has already been made to the fact that constitutional interpretation, conceived and developed by Vallarta, soon lost its true purpose as a governmental institution, deprived the supreme judiciary of its political category and its rank as a co-ordinate of the executive and legislative power. The protection of individual rights might well have been left to the inferior courts; but the interpre-

tative function is an attribute of an integrating member of the national organism which may not be inferior to the other governmental agency, the equilibrium of which it is its main function to preserve, however necessary it may be to restrain political chiefs and military commanders. The greatest thing for the oppressed is that when they seek the protection of the Constitution they shall promote defense of the fundamental law and the integrity of the government.

This perversion of purpose has led to the adoption of the practice of sacrificing the rights of all for the sake of the rights of the individual by suffering the amplification of article 14 of the Constitution through revision of criminal and civil judgments. This article provides for judgments in civil cases, prescribing that in absence of specific legislation decisions shall be based on interpretation or upon the basic principles of law (*derecho*). Its most ardent defenders recognize it as destructive of local independence, of the federal principle, and of the dignity of a governmental agency. This is both unethical and at the same time a sham, for the Supreme Court cannot function in these small cases as effectively as could the lower courts, because it is swamped with cases which it must decide without sufficient review. Thus all the courts become perverted, for those of the states can have no interest, or moral responsibility for their decisions when they know they have no authority and may be reversed without due deliberation by a hasty Supreme Court review. It will not serve to attempt remedy by dividing the Court into chambers for special functions. It would be better to follow the Argentine imitation of the American method, which does not, as does the Mexican system, violate the character of law by calling infractions of the commercial or civil codes violations of the Constitution, and which, when it brings these matters before the supreme judiciary, does so not by opening a new suit, but by ordinary appeal to the Court not as a branch of government but as a court of appellate jurisdiction.

When the Mexican court accepted the inferior rôle developed by the *amparo* process, litigants hastened to bring

before it every adverse judgment; review of these became its chief and absorbing function; every case became a constitutional one. The Court descended to the level of the inferior courts, bringing the function of constitutional interpretation to the door of death.

Although it is not true that the Mexican mode of constitutional interpretation is a native institution, or that as Vallarta claimed, it is superior to that of the land of its origin, it is true that, viewed from the standpoint of its judicial structure, it possesses certain advantages for Latin-American countries which may make it, once it becomes properly established in actual practice, superior to the American system of the supremacy of the judiciary. This may be shown by a brief exposition of the bases of the American system contrasted with the Mexican.

American justice, in order to establish its supreme authority emanating from the inviolability of precedent, rests upon the stable sanctity of the common law. This judicial supremacy established by Marshall was the rock on which the Union rested during the test of Civil War. Now the judicial supremacy advocated by Coke rested on principles *superior* to the common law emanating from reason or divine conscience; it would in ultimate analysis have resulted in the supremacy of the judge over the law and in judicial decision as the highest authority, even as a despotic imposition. On the contrary, Marshall rested on the provisions of the Constitution as the expression of the popular sovereignty, the authority of the tribunals existed solely in interpretation, and resided primarily in the Federal Court. Thus the Constitution was supreme. But as the American jurists had been nurtured in the theory of Coke, many judges before and after Marshall based their opinions on "the general principles of reason and justice" or on "the genius and spirit of the system of free government," and laws were annulled without resting decisions on the Constitution. This illogical extension of judicial authority above the precepts of the Constitution gave to court sentences which originated it the designation "judicial legislation"

applied by its opponents. The immobility of the common law, the general character of the court sentences, and respect for precedent, were all combined to give basis to attacks and loss to prestige. American courts have not always prudently limited themselves to examining the laws from the purely constitutional point of view, especially in cases where the line of separation between legislative and judicial domains is vague. The result has been bitter censure by non-conforming jurists, aggressive publicists, and political parties. In the pre-Civil War epoch the strict-constructionist decisions of Taney combined with political considerations to reduce the prestige of the Court to a degree from which it did not recover until the placid period beginning in 1870.

The rigidity of legal education under the common law has tended to maintain the inviolability of principles independently of Constitutional precepts. Hence the necessity to fix the limits of both the legislative and the judicial functions, an attribute controlled by the courts. When interpretations avail themselves of the fundamental principles of reason, justice, the social pact, they invade the legislative domain and invoke criticism which challenges the entire theory that the faculty of judging the constitutionality of the laws is founded on the Constitution.

This attitude has grown since 1914, at which time the Supreme Court was granted revisory power over all cases involving application of the Constitution and federal laws, and not only, as formerly, over those inferior court decisions in which the Constitution was alleged to be infringed. When limitations on the Courts are proposed, it is this judicial supremacy which is attacked, for the state courts have themselves developed within their spheres an even less moderate basis of interpretation based on Coke's tradition.

With the common law stable and the Constitution rigid, jurisprudence is based on an immobile system of written precepts which are changed only by exceptional reforms, and on precedents equally immutable. Until quite recently, amendments to the Constitution have been rare, after the original ten which constitute the so-called Bill of Rights.

This immobility has prevented the adaptation of the governmental framework to the needs of the modern industrial epoch, so that the United States courts are accused of placing obstacles in the way of desired industrial legislation. Up until 1910, one hundred and fifty laws affecting wages, hours of labor, employment of women and children, and labor unions, were declared unconstitutional, whereas property rights had become fixed. This situation creates popular antipathy and a new menace to the Court, whereas the earlier resistance to it was not due to popular clamor but to the jealousy of co-ordinate federal arms of government and the state governments. Industrialism has transformed economic theories while precedent petrified the law.

A more serious menace to judicial supremacy is the plebiscite legislation of the initiative and the referendum. It will inevitably become intolerable that laws enacted by direct popular intervention should be annulled by the courts; judicial interpretation will tend to disappear in the face of the tyranny of the majority represented in plebiscite legislation. This is not, as some American writers fear, a move toward the European parliamentary supremacy, but rather away from it, and means the reduction of power of legislative as well as of judicial bodies. If popular legislation progresses it will present a danger to the equilibrium of the government, may even transform, dislocate, or disorganize the regimen to which the nation owes its life and its grandeur.

So much for the American system. The Mexican plan of constitutional interpretation was not copied entirely from the American because Otero was only vaguely aware of the details of the latter when, in 1847, he proposed a popular safeguard in the *Acta de Reformas*. His plan was preserved by Ocampo in the Constitution of 1857. Thus the writ of amparo, by which the organic law is interpreted, became not a mode of appeal but a new process, to be originated in the federal jurisdiction only. Thus the Supreme Court is the only final authority which may interpret the Constitution. This makes the Mexican system free from the intervention of the lower courts in constitutional ques-

tions, an obvious advantage, for their interposition would have been a danger much more grave in Mexico than it is in the United States. Mexican inferior courts, though obliged to apply the Constitution in preference to contradictory local laws, have not the anxiety lest they be reversed which prevails in American courts; they are moved chiefly by the necessity to avoid responsibility by rejecting local laws which are obviously unconstitutional. This tempering of the principle of the supremacy of the Constitution brings it about that laws are only very unusually nullified by the lower courts. The parties always have the redress of *amparo* if an unconstitutional law is applied to them.

Constitutional interpretation, coming to Mexico independently, did not bring with it the prejudices established by a prior doctrine. In spite of the poverty of Mexican practice, the Court will not be likely to base its decisions against laws or administrative acts on general principles independent of Constitutional precepts. The most notable mistake it has yet made, in the doctrine of incompetency of origin, was based on the text of the Constitution. Judicial supremacy may hence develop in Mexico as amply as is needful without danger of creating what is challenged in the United States by enemies of the practice as government by a judicial oligarchy.

Furthermore, Mexico is exempt from the petrification of jurisprudence, from the danger that the supremacy of the judge may act as a dike to retard the currents of national life, finally to burst under pressure. Respect for precedent will come when the Court develops a system of decisions which inspires confidence; but this will never amount to the passive obedience conceded in the United States to "judicial legislation" to the point of destroying the legislation of the legislatures.

In the United States judicial supremacy antedated the national Constitution; it arose from the colonial charters and the state constitutions. Hence interpretation by the state courts is direct and multiform. But in Mexico local constitutions are of little interest outside of their provisions for the transmission of power. Their application is slight,

and their amplification has no connotation of coveted autonomy. There is no case wherein conflict between the law and the constitution of a state has put to a test the authority of the judges to settle it. Local judges do not have such a grave responsibility as that of maintaining the governmental equilibrium or the Constitution.

Nor is there in Mexico that threat of danger to judicial supremacy which is foreshadowed in the United States. Popular legislation is a long way off, since it depends on an exercised self-government which cannot develop for many years in Mexico; nor is it likely that parliamentary supremacy will soon arrive, to menace a Constitution even now on the way toward being placed in practice.

The Mexican system has yet another advantage in the immediate protection which amparo and the ample enumeration of the rights of man in the Constitution provide. No other country provides such prompt remedy in so many kinds of cases. The idea of habeas corpus for personal liberty is extended by amparo to the home, to property, instruction, liberty of the press, to all the rights enumerated in the Constitution.

In a word, the dangers to judicial supremacy (as a judicial structure merely, it not being a realized fact) are those which proceed from degeneration of the system which originated it. If the supremacy of the judiciary is not imposed, Mexico will continue under the *supremacy of the executive*, which is the shortest and most sensible definition of the dictatorship. To avoid this it is necessary that constitutional interpretation shall attain to its transcendental effect not in protecting individual rights, though these are essential, but in providing for the benefit of all, in guaranteeing the organization of the nation; for all the assurances of public liberties are reposed in the integrity and purity of the Supreme Court.

NEWS AND NOTES

MEXICAN-AMERICAN AMITY CONFERENCE

Secretary Hughes' formal announcement on April 23 that a joint commission would meet soon thereafter in Mexico City "with the view to hasten the reaching of a mutual understanding between the Governments of the United States and Mexico" met with popular approval in both countries. The satisfaction was continued by the disclosure on the following day that the American commissioners would be Charles Beecher Warren, former Ambassador to Japan, and John Barton Payne, former Secretary of the Interior. At the same time Secretary Hughes announced that while the United States had no desire to interfere in the domestic affairs of Mexico, "when a nation has invited intercourse with other nations, has established laws under which investments have been lawfully made, contracts entered into and property rights acquired by citizens of other jurisdictions, it is an essential condition of international intercourse that international obligations shall be met and that there shall be no resort to confiscation and repudiation." The Secretary of State further indicated that no particular form of the assurance against confiscation would be insisted upon—that the substance of such protection was all that the United States sought—and so set at rest the rumors that the United States would continue to demand a formal treaty as a condition precedent to recognition. One week later President Obregon in a public statement indicated that the agrarian policy of Mexico had its foundation in the national conscience and that neither foreign nor domestic influences could cause his government to deviate from its announced program.

President Obregon selected as Mexican commissioners, Ramon Ross, Acting Director of the Public Charities Bureau, and Fernando Gonzalez Roa, a Director of the Mexican National Railways. The instructions to the Mexican delegates called for an absolute insistence upon respect for Mexican sovereignty, an announcement of the administration's approval of a pending oil law intended to meet the objections of foreign interests, an agreement to non-retroactivity of the petroleum sections of Article 27, an understanding that control of the proposed national bank of issue must remain in the hands of the Mexican government, and a proposal of arbitration for disputes arising after recognition. The oil law referred to confirmed the rights of foreign owners in property held prior to May 1, 1917, subject to revalidation of claims within three years from the date of promulgation of the statute; federal control of the oil industry to be exclusive, all rights of participation in the proceeds of oil taxation being denied to the individual states. This measure had passed the Chamber of Deputies by a vote of 169 to

2, but the Senate delayed action pending the outcome of the conference. Later, the Chamber endorsed the President's stand in the negotiation proceedings by the overwhelming vote of 131 to 9.

When the conference officially opened on May 14, the commissioners were confronted with two major problems—those connected with oil rights under Article 27 of the Mexican constitution and those arising from the expropriation of lands in furtherance of the agrarian policy—and a number of more or less minor ones including restriction of Americans from acquiring property within a certain zone along the Mexican coast and the international boundary, restrictions on the rights of religious bodies, claims for damages to Americans and their property during the decade of internal chaos in Mexico, disposition of the territory resulting from a change in the channel of the Rio Grande, settlement of difficulties arising from the international debt agreement, formulation of a treaty for commercial relations, and adjudication of rights of American citizens as regards expulsion from Mexico. The first three weeks of the conference were devoted to statements of the respective positions of the two countries and to prolonged discussion of these. The Mexican commissioners went at length into the various interpretations of Article 27, quoting the President, the Secretary of State, and the Supreme Court to the effect that the provisions of that article were not retroactive. Much time was also devoted to a study of the various federal, state, and municipal laws providing for expropriation, to the seizures made under those acts, and to illegal seizures made without the authority of any law. In response to estimates submitted by Mr. Warren that two-thirds of the American property expropriated in Mexico had been illegally seized, the Mexican government took steps to remedy the situation by causing the restoration of such lands. The American contention throughout was that any understanding must be national in its scope and must preclude action by the states and municipalities.

News dispatches dated June 23 gave what purported to be the basis of settlement finally proposed by the Mexican government. The Mexican constitution had provided that the payment for land expropriated as part of the government's agrarian policy should be made in the form of six per cent federal bonds. In view of the state of the market for Mexican bonds, American owners had considered this as virtual confiscation; and while the United States government conceded that Mexico had the right to expropriate with due compensation, the general position was that due compensation had not been provided. The basis ultimately proposed by the Mexican government was one affording the land owners the choice of cash or six percent federal bonds. The expressed belief of the Mexican government that the owners would prefer bonds is reinforced by the 1923 budget provision for the payment of interest upon such bonds. The oil problem arose from the alleged retroactive provi-

sions of Article 27, supposedly affecting property owned by Americans prior to May 1, 1917, when the present constitution became effective. Leases have been divided into two classes. "Class One" has been recognized as satisfactory by the American commissioners; "Class Two" leases (acquired prior to May 1, 1917) under the proposed plan, may be brought within "Class One" when the owners denounce them and begin to prospect within five years from the date of the agreement; i. e. any oil found under those conditions will belong to the owners just as though they had begun the exploitation of their land prior to the time the constitution went into effect, and the provision specifying government ownership becomes ineffective as to such lands. At the end of the five year period the owners may apply for indefinite concessions.

The conference was still in session at the time of going to press and no official statement of the proposed basis had been given out, nor was confirmation of the press dispatch of June 23 available.

BOLIVIA

The Government has published a decree reorganizing the diplomatic service, requiring those who have held diplomatic positions and wish to continue in this career to register at the Office of Foreign Relations within three months from the date of publication of the decree, and to file a detailed account of the diplomatic services they have rendered. Registrants are also asked to present copies of monographs, studies, or reports which they have written on international subjects.

Reopening of the treaty of 1904 by which definite possession of Antofagasta was given to Chile, with free transit through Chilean ports and the construction of a railroad from Arica to La Paz as a compensation for Bolivia, is again the burden of an exchange of notes between Bolivia and Chile, the former being the initiator.

CHILE

The government is busily engaged in preparing its argument and data for submission to President Harding in accordance with the terms of the protocol signed in Washington in 1922 for the settlement of the Tacna-Arica difficulty long existing between Chile and Peru. It is expected that the Government will have all documents prepared before September 18, the date set for the exchange of allegations between the two republics. Meantime Señor Rivas Vicuña, former minister to Venezuela, has been added to the commission sent to Washington.

The Fifth International Conference of American States which was reaching the hoped-for solution to the major problems confronting it, held at Santiago from March 25 to May 3, 1923, adjourned without

For the expeditious handling of business before it, the Conference created eight principal committees: Political, Juridical, Hygiene, Communications, Commerce, Agriculture, Armaments, and Education. At the conclusion of its sixteen plenary sessions, the Conference had approved and signed four conventions and adopted seventy-three resolutions.

The conventions were: First, one providing for the settlement of disputes arising between American Republics through a procedure similar to that outlined in the Bryan treaties. Second, one providing a more satisfactory system for the international registry of trade marks. Third, one providing for the use of the so-called Brussels Nomenclature of 1913 by the contracting parties in their statistics on national commerce. Fourth, one providing means of greater publicity of customs documents.

Among the more important resolutions was one relating to the reorganization of the Pan-American Union through the creation of four new permanent committees, one each on economic and commercial relations, one on labor, and one on intellectual cooperation; and the redrafting of the article providing for the composition of the governing board so as to authorize an American Republic which may not have a diplomatic representative accredited to the government of the United States to appoint a special representative on the governing board. The chairman of the board, heretofore the Secretary of State of the United States *ex officio*, is to be elected by the board in the future.

The Conference recommended that the Commission of Jurists which met at Rio de Janeiro in 1912 be reconstituted and convened at Rio in 1925.

Other resolutions dealt with hygiene, improvement of ocean transportation, intercontinental railroad and motor transportation, commercial aviation, uniformity of shipping and insurance documents, inter-American electrical communications, parcels post, commercial arbitration, inter-American exhibition of samples, and standardization of specifications of machinery. Resolutions on educational matters provided for the convening of a Pan-American University Conference at Santiago in 1925; entrusting to the Pan-American Union the encouragement of the interchange of university professors and educational information; and recommending the encouragement of vocational training and the formation and development of students' organizations. Various other resolutions dealt with such topics as the preservation of archaeological remains, protection of copyrights, and study of agricultural problems.

Limitation of armament occupied a very conspicuous place on the program; and while the Conference adopted a number of general recommendations, no satisfactory solution of the problem was effected. Further attempts are to await the outcome of a conference of the presidents of Argentina, Brazil, and Chile to be held in the fall of 1923.

Havana, Cuba, was selected as the meeting place of the Sixth Conference which is to convene in the shortest time possible, not to exceed five years from the date of the last session of the Fifth Conference.

COLOMBIA

By a law approved on September 27, 1922, commercial offices, which are to be conducted in connection with the Department of Agriculture and Commerce and under the auspices of Colombian diplomatic representatives, will be established in foreign countries in order to give information and promote commerce between Colombia and other countries.

The municipality of Bogotá has established a municipal loan and savings bank for the benefit of the poorer classes, to whom it will doubtless render great assistance. The municipality will contribute 30,000 pesos to start the bank.

A permanent status has been accorded the Advisory Committee on Foreign Relations consisting of five members, three appointed by the Senate, one by the House of Representatives, and a fifth by the President. The committee will cooperate with the Government in very branch of national policy, and have entire charge of pending territorial and boundary questions, of the summary and proof of deeds connected therewith, and of the preparation of the memoirs to be submitted by Colombian delegations to Pan American conferences, sessions of the League of Nations, and other international conferences to which the Republic of Colombia may be invited.

The group of American experts in finance, accounting, banking and legislation employed to reorganize the government service includes Dr. E. W. Kemmerer, professor of political economy and finance in Yale University, as president; Professor Fred. R. Fairchild, of Yale; Mr. H. M. Jefferson, of the Federal Reserve Bank of New York; and Mr. Thomas R. Lill of New York. Mr. Frederick B. Luquien, of Yale, was selected as secretary of the commission.

Negotiations between Colombia and Panama designed to bring about the reestablishment of diplomatic relations have been temporarily interrupted by the difficulty of agreeing upon the boundary. The question hinges upon whether settlement shall be incorporated into the protocol or left to special negotiations. Through the good offices of the United States, a favorable solution to this question is expected.

The Government of General Ospina has been given a two-thirds majority at the general election.

COSTA RICA

The supplement to the *Gaceta* of January 5, 1923, gives the budget of expenditures for the present year as 20,218,518.52 colones, of which appropriations are as follows for the various de-

parements: Government administration 1,126,428 colones; Promotion 2,454,061.40 colones; Foreign Relations 505,356.80 colones; Justice 74,072 colones; Religion 46,000 colones; Charity 342,137 colones; Public Education 2,605,672.36 colones; War 260,000 colones; Judiciary 611,680 colones; for the service of the public debt 4,702,231.25 colones; and obligatory amortizations 3,020,177.61 colones. The revenue is calculated also at 20,218,518.52 colones.

A protocol has been signed by the United States and Nicaragua providing that in the event of a decision by the United States to build a canal along the Nicaragua route, Costa Rica will be consulted directly by the United States with relation to interests held by that country under the terms of the Nicaragua-Costa Rica boundary award made by President Cleveland, special mention being made of the San Juan River section and the possibility of using Salinas Bay as a canal terminal.

Chief Justice Taft has agreed to act as arbiter in the dispute over the Amory oil concession granted to a British company by an unrecognized government. Ninety days for argument, sixty for rejoinder, and an additional ninety days for the decision are allowed in the protocol between Costa Rica and Great Britain, ratifications of which were exchanged in Washington on March 7.

CUBA

The *Gaceta Oficial* for November 23, 1923, carries the text of a decree establishing a one percent sales tax on national products. The tax is to be paid by merchants, manufacturers, producers, and other persons and companies mentioned in the decree.

ECUADOR

A finance committee has been established by the Government to regulate the collection and expenditure of all revenues. The committee is composed of three persons with the Minister of Finance as chairman; the president is also authorized to engage a foreign finance adviser. Boards have been appointed by the committee to consider the questions of forming a reserve bank and a national mortgage bank.

HAITI

Production, the reestablishment of credit, cooperation, and migration of labor; the collection of pertinent statistics; and the formulation of suggestions to the Council of State and the administration are among the functions of a recently organized commission on labor and the amelioration of the condition of the working classes.

According to the enumeration made by the clergy on January 1, 1923, the population of Haiti was 2,045,000.

The claims commission established in accordance with the protocol of October 3, 1919, between Haiti and the United States, consisting of M. Abel N. Leger, Mr. John S. Stanley, and Sr. Hector de Saavedra, has set August 31, 1923, as the last day upon which claims against the Republic may be presented.

American marines have been progressively withdrawn from the Republic, the plans calling for only one detachment after April 15, that at St. Michel where a quantity of equipment is stored.

HONDURAS

Ratification of the treaties entered into at Washington has been delayed by the recent presidential campaign.

MEXICO

Beginning July 31, 1924, women of age in San Luis Potosi who know how to read and write may take part in municipal elections; and beginning July 31, 1925, they are given all rights of suffrage. Women members of religious associations and women being educated or cared for by such associations will not be given the vote.

The Secretary of Industry and Commerce announced on February 8, that thereafter the grant of petroleum concessions would be immediately made known to the public through the press. Future concessions will be made by express resolution of the President and on the responsibility of the Secretary of Industry and Commerce.

In order to minimize the difficulty of exploiting jointly owned land which appeared likely to produce petroleum, the State of Vera Cruz has decreed that such exploitation may take place with the consent of the owners of more than half of the property, due regard being had for the rights of minority owners.

The principal provision of the law authorizing the Executive to organize the Bank of Mexico, sole bank of emission, stipulate that the initial capital shall be 25,000,000 pesos which may be increased later to 100,000,000 pesos; the Federal Government shall contribute 51 percent of the capital, but that the board of directors shall be elected by the 49 percent, the Secretary of Finance being president of the board and the managers being appointed by the Government which also retains a certain veto; and the Federal Government may acquire the remaining stock at the end of fifteen years; circulation of notes shall be purely voluntary. The relation of the Government to the Bank with regard to the proceeds of the productive circulation are also outlined.

The third congress of Mexican municipalities met in the capital from May 20 to May 30. The chief object of the discussion was to mark out, if possible, for future legislation, the division between state and municipal jurisdiction in municipal affairs.

A recent law passed by the legislature of the State of Durango limiting the number of clergymen in each denomination to twenty-five has been protested vigorously by the Catholic population. At present there are about 250 Catholic priests in the state.

Stability of government as well as confidence in the legislative body is indicated by the 1923 budget, the first to be issued by the legislative power since the Madero Congress of 1912. During the intervening period finances have been in the hands of the President by virtue of extraordinary powers vested in him. Economy is the keynote of the document, the total of 1923 showing a decrease of ten percent from that of 1922. Of the entire amount of 347,006,716 pesos, 41,470,000 pesos are devoted to service on the foreign debt, approximately three-fourths comprising an entirely new item in the first payment under the international debt agreement. An additional 800,000 pesos serve as interest on the "Agrarian Debt" a fact indicating that though the principal of the agrarian indebtedness may not be immediately available, the Government does not consider its land policy one of confiscation. Pensions are provided in the amount of 500,000 pesos for teachers and 4,000,000 pesos for retired government employees, civil and military. While appropriations for national defense show a net loss of 30,000,000 pesos over last year, education is the recipient of an increase of 2,436,187 pesos, bringing the total for education to 52,362,903 pesos or about fifteen percent of the total budget.

A formal invitation has been received from the League of Nations requesting that Mexico be represented at a conference on customs regulations to meet on October 15 at Geneva.

Nicaragua

On March 22 the treaties entered into at the Central American Conference at Washington were adopted and representatives to sit on the proposed Central American tribunal were named.

Salvador

Dr. Alfonso Quinonez Molina, President of El Salvador and Dr. Pio Romero Bosque, Vice President, took oath of office on March 1, 1923. The members of the President's cabinet are the following:

Dr. Reyes Arrieta Rossi, Minister of Foreign Affairs, Public Instruction, and Justice.

Dr. Francisco A. Lima, Minister of Government Promotion, Agriculture, Health, and Charity.

Dr. Calixto Velado, Minister of Finance and Public Credit.

Dr. Pio Romero Bosque, Minister of War and Navy.

URUGUAY

The 1922-1923 budget was fixed by Congress at 39,654,254.77 pesos apportioned as follows: Legislative branch 963,023.95 pesos; Presidency 57,320.45 pesos; National Council of Administration 149,010 pesos; Ministry of Interior 4,172,379.48 pesos; Ministry of Foreign Relations 662,339.16 pesos; Ministry of Finance 2,649,759.14 pesos; Ministry of Public Instruction 5,967,024.78 pesos; Ministry of Industries 1,293,343.22 pesos; Ministry of Public Works 1,174,889 pesos; Ministry of War and Navy 6,696,489 pesos; Judiciary 562,050 pesos; public debt 11,329,138.44 pesos; sundry credits 987,156.19 pesos; pensions 2,979,331.92 pesos. The revenues are calculated at 35,894,583.92 pesos.

The General Bureau of Statistics reckoned the population of the Republic on December 31, 1922 at 1,564,000 inhabitants, or an increase of 36,000 during the year.

NEWS AND NOTES

EDITED BY B. F. WRIGHT, JR.

University of Texas

NOTES FROM OKLAHOMA

PREPARED BY MIRIAM E. OATMAN

Norman, Oklahoma

SUIT OVER UNIVERSITY FUNDS.—When Governor Walton lowered the legislative appropriation for salaries at the University of Oklahoma from \$700,000 to \$500,000, and made other cuts in items of the institutional appropriations bill affecting a number of state schools, hospitals, etc., opinion differed as to the legal consequences of his action. No test suit could be brought until July, when the fiscal year began. At this time a taxpayer secured an injunction restraining the state auditor from paying out any money for salaries of university employees, on the ground that Governor Walton's failure to approve the sum fixed by the legislature had the effect of a veto of the entire item. At the hearing in district court, the defense held that the governor had approved the item, but had endeavored to change it, which was an act beyond his powers and thus of no effect, so that the item now stands approved in full. Judge Zwick agreed with the latter contention, dismissed the injunction, and directed the auditor to enter \$700,000 on his books as the salary item of the university. Appeal was taken to the supreme court, which held a hearing at once, but reserved opinion. The case is of great interest, not only to the university, but to all the other schools and institutions affected by the governor's changes in appropriation items.

CHANGES IN BOARDS OF REGENTS.—The board of regents of the University of Oklahoma, and the state board of agriculture, which acts as the board of regents of the Agricultural and Mechanical College, have both been reconstructed twice in about three months. The governor summarily removed and replaced several members of the university board in April. The new board was not wholly harmonious; and in July two members were replaced by new appointees. No president for the University has been secured.

The elective member of the board of agriculture, John A. Whitehurst, who is ex-officio president of the board, and the Reconstruction League members, who were appointed by the governor, have been hostile from the first. Against the vote of Whitehurst, George Wilson, the Reconstruction League candidate for the position, was made president of the Agricultural and Mechanical College. A bitter fight against Wilson was made by the American Legion. Finally, late in July the governor replaced the Reconstruction League mem-

bers of the board of agriculture by two "regular Democrats," and at the next meeting of the board Wilson was ousted, and with him several faculty members, on the ground that they were "red." There was no pretense that the fight was other than a political one. The *Oklahoma Leader*, the official organ of the Reconstruction League, interpreted Walton's latest changes in the board as a betrayal of the common people; while the American Legion and the Democratic newspapers applauded it as a victory for "regularity" over "radicalism." Only here and there a protest was made against introducing political considerations into the choice of a president for a state school, or against hiring and dismissing faculty members because of their political affiliations.

PARDON AND PAROLE INITIATIVE PETITION.—An initiative petition is being circulated by the United Commercial Travelers of Oklahoma, the Travelers' Protective Association, and others, to amend the state constitution by creating a board of pardons and paroles. If the amendment is adopted it will limit the governor in exercising the power to pardon, parole, reprieve, or commute sentences of persons convicted of crime, to the recommendations made by this board. The attempt to establish a similar board by legislative enactment some years ago was declared unconstitutional, but the dissatisfaction with the unlimited power of pardon and parole now in the governor's hands has continued, and the present petition is its result.

NOTES FROM TEXAS

PREPARED BY THE EDITOR OF NEWS AND NOTES

WORK OF THE SECOND AND THIRD CALLED SESSIONS OF THE THIRTY-EIGHTH LEGISLATURE.—The failure of the regular session of the Thirty-eighth Legislature to pass certain essential appropriation bills made necessary the consideration of such measures in the two called sessions which adjourned finally June 14 (the first called session lasted but an hour). Practically all of the time of the special sessions was devoted to a consideration of financial measures, one of the few exceptions of any importance to this being the bill creating a separate State Department of Banking. This was followed by a bill changing the name of the Department of Insurance and Banking to Department of Insurance and the head to Commissioner of Insurance.

At the end of the second called session the appropriation bills came to a total of \$46,523,909 (including those passed by the regular session). As it seemed certain that appropriations of this amount would result in a treasury deficiency of some \$7,400,000, Governor Neff vetoed practically every measure calling for any appropriation from the state treasury and called the legislature into another called session to the end that appropriations and revenues might be bal-

anced. However, at the end of the third called session the net reduction was but \$3,721,000. This probably means that the state treasury will show a deficit of some \$4,000,000 at the end of two years unless the new tax measures bring in more revenue than they can reasonably be expected to produce.

HIGHWAY AMENDMENT NULLIFIED.—The Thirty-eighth Texas Legislature voted to submit a constitutional amendment to the people on July 28 to take the control of designated state highways from the different counties where it now resides, and vest it in the State Legislature. It also imposed in the Legislature authority to levy excise taxes exclusively for the support of state highways. At present the State Legislature has power to levy excise taxes (in the form of occupation taxes) but one-fourth must be expended on the public schools.

By congressional act every state that vests control of its state highways (to be designated) in the legislature is entitled to federal aid equal to the amount expended by the state on these roads. Not over seven per cent of the state's roads can be designated as state highways.

At present there is no connected and uniform system of road construction. Each county has control over all its highways. The amendment would leave control of all roads in the counties except that portion designated as state highways. That portion would be constructed and maintained by the state from state taxation, supplemented by the federal aid. The amendment also vested authority in the legislature to compensate those counties that have already made valuable improvements on state highways from their own funds.

The proclamation of the governor setting July 28 as the date of the election was revoked on July 10 upon advice from the attorney general.

A provision in the present state constitution requires that a proposed amendment be published in a newspaper in each county once each week for four consecutive weeks, beginning at least three months before the election. The highway amendment was not mailed to the newspapers for publication until after June 4. Since the election was called for July 28, it is obvious that the constitutional provision requiring publication to begin at least three months before the election was not complied with. In response to an inquiry from the secretary of state, the attorney general ruled that this provision of the constitution was mandatory and that failure to comply with it exactly was fatal, and the election if held would be null and void.

The time allowed states to comply with the federal requirement and make themselves eligible for the federal aid to supplement state funds expended on roads will not expire until after the Thirty-ninth Legislature meets in 1925, and the people will yet have time to vote on the change in the constitution if the question is submitted to them. There is a constitutional requirement that amendments be submitted at regular sessions of the legislature.

Since the attorney general's opinion has been rendered, there has been considerable conjecture regarding the validity of the Prohibition and Free Textbook amendments. It is alleged in many quarters that they were not adopted strictly according to the constitution, and attorneys have already attacked the soundness of the Prohibition amendment upon this ground. If it is shown that the three months requirement has not been complied with in the case of either of these amendments it will probably prove fatal to them as in the case of the highway amendment. However, the attacks so far seem to have been centered around the proposition that the amendments were not printed for the required length of time in all the counties of the state, not that publication was not begun three months in advance of the election. If previous decisions of the courts in election contests can be taken as a criterion, in order to successfully contest the amendments on this latter ground, it will likely have to be shown that the failure to publish in some counties changed the result of the election.

BOOK REVIEWS

EDITED BY MALBONE W. GRAHAM

University of Texas

CRESSON, W. P. *The Holy Alliance: The European Background of the Monroe Doctrine.* (New York: Oxford University Press, 1922. Pp. x, 147. \$1.50.)

In a lengthy introduction (35 pages) the author gives an account of the early years of Tsar Alexander, of the influence of his instructors and of the "Young Liberals," how, on his accession to the throne at the age of twenty-three, he was cast into the whirlpool of international problems brought on by the activity of Napoleon, how he sought to realize a condition of peace for the people of Europe under beneficent, if despotic, governments, how he dragged the powers on in pursuit of Napoleon after the battle of Leipsic and concluded the Treaty of Chaumont to drive Napoleon out, and later brought about the Holy Alliance.

The main body of the book deals with the reception of the Holy Alliance, its early policy, especially in relation to the establishment of monarchies in the American colonies, the congresses from Aix-la-Chapelle to Troppau, and the announcement of the Monroe Doctrine.

In the preparation of this work Mr. Cresson, sometime secretary of the American embassy in Petrograd, has had the advantage of access to material never before open to the student, particularly in the Russian archives, where one would naturally expect to find the most valuable material relating to the Holy Alliance. He has also made use of other sources, both manuscript and printed, hitherto little used.

This is not a book for the casual reader, but for the scholar, especially those interested in the deeper intricacies of early nineteenth century diplomacy. Possibly some even of the latter class may be surprised to learn that the bringing of the United States into the Holy Alliance was ever seriously considered in Europe (58, 78, 81, 85, 87), even after the Alliance had started on the downward road of reaction and repression. It was because the powers hoped to take advantage of differences between the United States and Great Britain to offset the "preponderating influence of Great Britain."

Other things brought out in the book which are not matters of common knowledge are, the serious consideration given by the powers to the establishment of Bourbon dynasties in the Spanish colonies—Canning was not averse to this, but was unwilling to make it a condition of recognition; that the desire to acquire Florida

was not the only reason why the United States held up recognition of the Latin American states—some of the powers let it be known that they would “view in an unfavorable light the acknowledgment of the independence of the colonies at this time by the United States” (90); that there was a real fear in Europe of the future influence of the United States in European affairs (67, 79, 86).

The following quotation from the instructions of John Quincy Adams to Middleton, minister to Russia (1820), sounds as if it might have been written yesterday:

To stand in firm and cautious independence of all entanglements in the European system has been a cardinal point in their [United States'] policy from the peace of 1783 to this day.

Yet in proportion as the importance of the United States as one of the members of the general society of the civilized nations increases in the eyes of the others, the difficulties of maintaining this system and the temptations to depart from it increase and multiply.

The importance of Mr. Cresson's contribution to the scholarship of diplomacy has been very well summed up in the “Foreword” by Doctor James Brown Scott:

The value of this little work is out of all proportion to its size. It makes clear the aim and purpose of the Tsar, Alexander, in forcing the Holy Alliance upon his unwilling confederates, it shows the relation of the Monroe Doctrine to the Holy Alliance, and it enables the unprejudiced reader of the Old as well as the New World the better to understand both.

DAVID Y. THOMAS.

University of Arkansas.

KORFF, BARON SERGIUS A. *Autocracy and Revolution in Russia*. (New York: Macmillan Co., 1923.)

This book illustrates the advantage of a firsthand acquaintance with the subject under discussion. Baron Korff understands the people whom he is discussing—his own people—and can speak with sympathy and discernment concerning their problems. His viewpoint is that of a liberal; and his book will doubtless be looked upon with equal distaste by the radical, who sees in Bolshevism the panacea for all social problems, and by the reactionary to whom the word Russia is still a red flag signifying danger and contamination. To both his definition of Bolshevism as a “pathological excrescence on the body of Revolution” should be of clarifying force. If one can get the viewpoint that the Revolution “has brought with it some improvements of the social order that have come to stay,” and that Bolshevistic excesses are to be regarded in the same light as the unfortunate French Reign of Terror, then

only is one prepared to form a just and sympathetic estimate of the enormously important happenings in Russia.

The difficult task of reducing to 150 odd pages the complex processes of the Russian Revolution has been well done, though of course there are many corners where one wishes the same penetrating illumination might be turned. First we are given a description of the old autocracy, undermined by the steadily growing bureaucracy, losing its social support, and fighting desperately during three decades to save itself. The second chapter emphasizes the often overlooked importance of the Russian peasantry, constituting 85% and therefore a majority of the population of Russia. Fourteen pages are then devoted to the Russo-Japanese war, the starting point of the revolutionary movement, "the mirror in which one could plainly see the defects of the Russian governmental system." While the actual events of the Revolution are rapidly passed over, the outstanding movements are clearly sketched. He shows how the Bolsheviks came into power upon the four appealing slogans, Peace, Bread, Land, and Liberty; and sums up their objects in the French proverb "*Otes-toi que je m'y mette.*" Chapter IV discusses the relation of Germany to the Revolution, as a gamble between Lenin and Germany, who tried to use him, in which Germany lost. Bolshevism, he says, was not initiated and could not be stopped by Germany, because it was a "genuine social process."

To the reviewer, the last chapter "Some Lessons of the Russian Revolution," is the most interesting and the most valuable. In it the keen perspicacity, the broad philosophic view, and the illuminating presentation of the author combine to present lessons which ought to be of extreme value to the student of history—though unfortunately, as Baron Korff says in his opening sentence, "The more one studies history, the more one becomes convinced of how little nations learn from the experience of other peoples." The whole book is more valuable as a study of the psychology of revolution than in any other way; and this point of view has not been properly presented for the Russian Revolution. A revolution, for example, does not instantaneously set up a new order. It is primarily destructive, and the constructive work is long and slow and uncertain. We should not therefore expect too much of Russia. It took almost a century for the pendulum to cease swinging in France.

Baron Korff would especially emphasize the developments with regard to Family and Property. The latter is of course the keynote of all criticism; and it is puzzling to the outsider to understand how 15% of the population were able to rule the state with so drastic a policy. Baron Korff explains that the peasants had for many decades desired the land, and supported Lenin because of his promise to secure more land for them. When they found that communism gave them no title to their land, they disowned Bol-

shevism; and Lenin was forced to grant them the right of holding property thereby destroying the entire *raison d'être* of the Bolshevik system. The hope of the future lies in the peasantry, who are a conservative force, but who are now recognising the need of intellectual leadership. Here, according to our author, lie the real gains of the Russian Revolution, and not in the temporary excesses of Bolshevism.

On the whole, the book is an excellent example of the lucid exposition, penetrating analysis, and sympathetic viewpoint which have gained for its author such rapid recognition during his residence in the United States.

CLYDE EAGLETON.

Southern Methodist University.

WILLIAMS, FRANK BACKUS. *The Law of City Planning and Zoning*. (New York: Macmillan Co., 1923.)

This is an interesting book recently from the press of Macmillans, the fourth of a series now being published under the auspices of the Institute for Research in Land Economics. It is the outgrowth of a series of lectures delivered in the University of Michigan in 1916. The author, Frank Backus Williams, is a member of the New York Bar and writes from his own experience as legal consultant in the city planning movement in his own and other cities. Throughout this discussion land economics is fundamental. The work of the architect, the engineer, and the landscape gardener is taken for granted. It is assumed that we know what ought to be done and the whole attention is turned to the difficulties in the way of doing it—difficulties arising out of a lack of the proper control of the land necessary to an improvement program. It is promised that no public enterprise can be accomplished except by methods sanctioned by the law as it exists where that enterprise is proposed; that a failure to know and appreciate this fact is one of the commonest causes of failure to obtain practical results, while scarcely less important is the failure to appreciate the possibility of changing the law for the better. And following this idea out the author devotes himself in the main to a comparative study of the statutes governing city planning in this country and Europe, with suggestions for their improvement. From this point of view it should be a useful handbook for city officials and for students and others who are interested in guiding the physical development of communities in attaining unity in their construction.

O. E. BAKER.

Simmons College.

EXLINE, FRANK. *Politics*. (New York: E. P. Dutton, 1922. Pp. xi, 226.)

In giving his book to an underserving world, Mr. Exline had no mean object in view, for on the title page we find that not only

is this "An Original Investigation into the Essential Elements and Inherent Defects Common to all Present Forms of Government," but that it is also "A Proposal for a Political System which will Automatically Produce the best Government possible in any given Community." If he has succeeded in accomplishing this end, there can be no doubt of the vast debt which mankind owes to him; he will have done more than all the other great political theorists together; more, even, than they attempted to do.

Before taking up this system that is to be a panacea for all our political ills, it may be well to examine some of the ideas contained in the first five chapters; chapters that are presumably intended to put the reader in the proper frame of mind and give him the degree of political enlightenment necessary to an acceptance of the "system." Their titles are not particularly new or suggestive: *Political Dogmas*, *Nature of Laws*, *Nature of Government*, *Sovereignty*, and *Public Opinion*. But, if the titles are neither original nor informative, many of the ideas are at least striking. We find, for example, that "natural law is ascertained by the operations of right reason," hence "every infraction of the law thus ascertained is contrary to right reason." How remarkable. And is it not unfortunate that we have a habit of differing as to whose reason is right? Also we find such meaningful statements as this: "The demand for justice must be satisfied; and it can be satisfied only by the actual attainment of that universal justice by which the benefits of government and civilization may be shared by all and denied to none." It is indeed regrettable that our thinkers have so long failed to see this truth of truths. How clear cut its thought and how simple its execution!

The reviewer was also decidedly interested to find that "all existing governments are autocracies" (17. Italics the author's in all cases) because they are characterized by self-derived power. However, though it seems self-evident that there could be no inconsistencies in such a masterpiece, the fact remains that although Mr. Exline favors what he calls a nomocracy (law derived power) he would vest sovereignty in his government. The reviewer is unable to understand why present limited governments (for the legal basis of practically all modern governments is a constitution or "fundamental law") are autocracies and the author's sovereign government would be a nomocracy. The key to the problem may perhaps, at least in part, be found in the fact that Mr. Exline does not have the slightest understanding of the difference between the state and its government (the latter being called a "body politic" and a "social organism." (17, 106, 116, 160.) Another point of interest in this connection is that power may be "partially absolute" (50) or "limited but supreme."

There are many other points in the first five chapters of the book which might be considered with interest, if not with profit. Suffice

it to say that the conclusion of these chapters seems to be that all the existing governments, which we fatuously call liberal or democratic, in fact, anarchic (as well as autocratic) because not the government but the people rule. The only method by which we can secure government that will be "beneficial to all and oppressive to none" is by the application of scientific principles to the problem, or, to put it differently, to rely up natural laws scientifically determined.

The constructive part of the work is to be found in the two chapters on "Political Selection" and "The Selective Organs." Here we find a mechanistic, Darwinian theory of selection applied to the problem of getting the "best government possible in any given community."

Such a system can be produced only if true merit rules. Now since natural selection has been interfered with in some manner (the exact nature of this obstruction is not described) we must substitute an artificial selective organism. To the three existing departments of government should be added a fourth, the selective. The function of this is the charting of all citizens of the state by various experts, and they are then to be allowed to hold office or exercise other political functions only if they have the proper I. Q. or whatever may take its place in Mr. Exline's system. The elective institutions, which have proved to be such a miserable failure, are to be discarded without exception.

If the author knew even a moderate amount of history and had read but a few works of political philosophy, he might have avoided the most of his more ridiculous mistakes. But the capital defect of the treatise is the failure to distinguish between the physical or biological and the social sciences. The differences are fundamental and almost obvious, but they have escaped the scrutiny of the author (7, 9). Hence he sets forth as his ideal a system that leaves entirely out of account all considerations of human nature and of social process that fail to fit into his machine-like structure. His only proof of the possibility of success of such an order is that analogous methods have been used in educational, military, and civil services. But the fact that all of these are subordinate services, and that even in these such methods have been applied in nearly all cases only to the non-policy determining officers receives no consideration.

The conclusion of the reviewer is that the first chapters are worse than worthless, and that the only constructive proposal of any value at all is the need of applying the teachings of science to political problems, but that, unfortunately, this idea is carried to such an absurd extreme that the system proposed as a solution of all our political problems is unthinkable except in a society made up of human automatons who desire nothing save efficiency and are accordingly willing to be ruled by an all-sovereign bureaucracy.

University of Texas.

B. F. WRIGHT, JR.

NORTON, THOMAS JAMES. *The Constitution of the United States: Its Sources and its Application*. (Boston: Little, Brown, and Company, 1922. Pp. 298.)

"The purpose of this book is to make accessible to the citizen and his son, to his newly enfranchised wife and daughter, and especially to his children in school, such a knowledge of the Constitution of the United States as will serve in emergency as a 'first line of defense'."

Knowledge of the Constitution, and of the original meaning as the authors intended it, appears to the author "essential to a full and strong citizenship."

Theologians are familiar with Bible Commentaries in which the Scripture text is given in bold type, followed by the exposition, which occupies most of the page. This is the arrangement adopted by the author. "The simple plan here is to explain the Constitution by a note to every line or clause that has a historical story or drama back of it, or that has contributed during the one hundred and thirty-three years of our life under this instrument to the National or the international welfare of mankind. This method leaves the text of the Constitution and the Amendments in unbroken connection, so that the whole great design is visible, and the explanation appears immediately under the part to be explained." That the Bible analogy involves more than form appears in the following: "As for more than a century and a quarter of unexampled social, civil, and material advancement, in which it has been the controlling force, the Constitution has applied itself, adapted itself, developed itself, amended itself, and, through stress and shock of civil war the like of which no other constitution ever felt, maintained its equilibrium, the American has reason to believe that his fundamental law contains inherently what the Scriptures call 'the power of an endless life'" (262).

It is interesting to learn that "our Constitution has been copied in whole or in part throughout the earth," and "to the extent that other countries have failed to follow the Constitution of the United States their governmental structures are weak." This is hard on countries like England.

The author lauds the division of governmental powers, quotes Chief Justice Marshall approvingly, and declares that without the prohibitions of the Constitution and the Courts the executive "would become as dangerous as he ever was to the safety of the government and to the rights and liberties of the people." The following is attributed to Jefferson: "In questions of power, then, let no more be heard of confidence in men, but bind him down from mischief by the chains of the Constitution."

In spite of the uncritical attitude manifested in the foregoing quotations the author has done a good piece of work. Valuable, for example, is the bringing of the decisions of the Courts down to

the present day. The author is not alone in his idea that a study of the Constitution would cure most of our political ills, but there are some who believe that the benefits to be derived from such knowledge and study, especially when associated with an uncritical attitude, may easily be exaggerated.

JOHN C. GRANBERY.

Southwestern University.

The Cambridge History of British Foreign Policy 1783-1919. Edited by Sir A. W. Ward, Litt.D., F.B.A., and G. P. Gooch, M.A., Litt.D. Volume II, 1815-1866. (New York: The Macmillan Co., 1923.)

This volume continues the same high standard of scholarly and exhaustive presentation which one has come to expect from the "Cambridge History" series. It seems to the reviewer to be also more interesting in style than is usual in that series, though of course the variety of writers precludes general judgment on style—or, for that matter, upon most characteristics of the volume as a whole. It includes Books II and III of the series, dividing at 1848; but the chapters are numbered separately for each volume. American readers would be glad to have not only the name of the author at the head of each chapter but his title as well. As to the latter there seems to be no system, though in most cases the information is given in the Table of Contents. The average American reader would probably assume that "G. P. Moriarty, M.A., Pembroke College, Lecturer in Indian History in the University" is a member of Cambridge University.

To review such a collection of monographs is difficult, and can perhaps be done best by summarizing and then picking out a few for discussion. The chapter upon the Congress of Vienna is, naturally, written by W. Allison Phillips, who might be expected to have written the following chapter upon the Holy Alliance as well. It is done, however, by H. W. V. Temperley, and is probably the best chapter in the whole volume. Mr. Omond writes of the independence and neutrality of Belgium; Mr. Mowat of the struggle with France over the Near East and other matters; and Mr. Moriarty of India and the Far East, including the Opium War he speaks, however, of the Opium Question and the Chinese War!). Mr. Newton (not the biographer of Lord Lyons) contributes very good chapters upon the relation with the United States, though written in a rather defensive style. The Revolutions of 1848 are described by Mr. Hearnshaw; and Mr. Reddaway has an excellent chapter upon the Crimean War, though he does not answer as thoroughly as he might have the question as to whether it was worth while. Other chapters are India and the Far East (1848-58) by F. W. Buckler; the Franco-Italian War, Syria and Poland, by Rachel R. Reid; Commercial Relations by J. H. Clapham and E. A. Benians; and

the last two chapters, Schleswig-Holstein, and Greece and the Ionian Islands, by the editor, Sir A. W. Ward.

Chapters I, II, VI, and XII are of particular interest to American readers and will have a purgative effect badly needed in this country. It is instructive to compare with them such nationalistic productions as that which in 1921 won the Knights of Columbus Historical Prize. Mahoney points out the "striking and sinister inconsistency between Great Britain's anxious request for a joint protest against intervention by other European powers, in Spanish America, and her stubborn refusal to recognize the independence of the Spanish-American republics." This is the usual American view; but to Mr. Temperley the striking and sinister inconsistency lies in our refusal to join with Canning in a joint guarantee of the Spanish-American states. With regard to this point Mahoney merely remarks, with seeming indignation, that "he apparently intended to have the United States commit themselves for all time to a non-intervention and non-annexation policy for South America and Central America." But Mr. Temperley hoists him upon his own petard: "Adams desired, not indeed the annexation, but the possible incorporation of both Texas and Cuba, and thought that both territories would ultimately fall to the United States. By the acceptance of Canning's self-denying ordinance the United States would be excluded from these ambitions." The reasons for Canning's refusal to recognize are given as the belief that the precedents required recognition by a mother country rather than by a neutral; Canning's bugbear that a General Trans-Atlantic League of Republics would be formed against a European League of Monarchies; and the fact that Spain, in the face of danger from France, was beginning to consider the recognition of the revolted colonies herself. According to Temperley the Polignac Memorandum, in which Great Britain disclaimed any desire to acquire the colonies for herself, did not reach Washington in time to assure the United States of English intentions.

Chapter VI gives an interesting account of the development of the patriotic legend in the United States which was at the basis of the bitterness between the two countries after 1812. It is worth emphasizing that "the many questions that were still outstanding between the United States and Great Britain were of far greater interest to the American public than to the British public, whose relations to America formed only a comparatively small part of their field of foreign affairs." He seems somewhat harsh toward the rulers of the Texan republic: "But no dependence could be placed on the rulers of Texas"; but he does not make the mistake of putting the movement for Texan independence entirely upon the basis of slave-holding ambitions. In view of the self-congratulatory attitude of most of our texts it is a bit shocking to be spoken of as "so aggressive a Power as the United States"; and in this

connection there is an interesting quotation from Disraeli (too long to copy), who says "That is not a sound policy which is founded on the idea that we should regard with extreme jealousy the so-called 'aggressive spirit' of the United States." In his second chapter Newton brings out in clearer relief than usual the aggressive policy of Seward during the Civil War, and the danger of war with England, as well as the probability of Lord John Russell recognizing the Confederacy.

Space does not permit a discussion of other subjects. The reviewer was disappointed in the account of the early origins of the Eastern Question, though the Crimean War is well handled. While the period covered is supposed for the most part to be dull, the reader will find the book worth reading from cover to cover. The viewpoint is of course distinctly English—and the spelling as well. "Lewis XIV," "Moskito Coast," "Blewfields," look strange. The thorough knowledge of the writers is illustrated in the fact that Temperley properly ascribes the phrase "entangling alliances" to Jefferson. A classified bibliography, arranged by chapters, is found at the end of the volume; it would be more helpful to the student if more critical.

CLYDE EAGLETON.

Southern Methodist University.

HARRISON, E. J. *Lithuania Past and Present*. (New York: Robert M. McBride and Company, 1922. Pp. 224.)

In his recent book on *Lithuania, Past and Present*, E. J. Harrison, formerly British Vice-Consul at Kovno and Vilna, has presented to us a most illuminating and readable volume on one of the four new republics on the Baltic which have been carved out of the former Russian Empire. Small nations are at a disadvantage in that they are likely to be oppressed by larger neighbors—especially has this been true of Lithuania. Oppressed by Poland from 1586 to 1790, Lithuanian nationality and individuality were vigorously persecuted; under Russian autocratic domination from 1790 to 1914, and German military occupation from 1914 to 1919, Lithuanian nationalism smouldered at times, revived now and then, and finally burst forth into flames in 1917-18, reaching the consummation of independence on Feb. 16, 1918. The rise of the Lithuanian State is well traced by Harrison. His account of the most urgent international problems facing the new republic is a fairly accurate one. Authoritative material is used to describe the dispute with Poland over the Vilna district, but there is a noticeable anti-Polish prejudice present in his treatment. Notwithstanding the recent developments in the Memel question, Harrison's treatment of it at the time of his writing shows an understanding of the fundamental questions involved in the question. The author then takes up a very interesting and vivid description of the character of the Lithuanian people;

their mythology; their ancient language and literature—the latter of which is notable for its “dainos” or ballads; and the art and music of these quaint peace-loving Lithuanian peasants.

On the whole, Harrison's book is an instructive and valuable volume. It is not authoritative and scholarly, neither is it superficial or amateurish in character. It is a valuable addition to the dearth of material on this new Baltic member of the Family of Nations.

MALBONE W. GRAHAM.

University of Texas.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC.,
REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912,

Of Southwestern Political Science Quarterly, published quarterly at Austin, Texas,
for April 1, 1923.

State of Texas,
County of Travis.

Before me, a notary public in and for the state and county aforesaid, personally appeared Frank M. Stewart, who, having been duly sworn according to law, deposes and says that he is the editor in charge of the Southwestern Political Science Quarterly, and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to-wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher: Southwestern Political Science Association, Austin, Texas.

Editor in charge: Frank M. Stewart, Austin, Texas.

Managing Editor: Frank M. Stewart, Austin, Texas.

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2. That the owner is: (If the publication is owned by an individual his name and address, or if owned by more than one individual the name and address of each, should be given below; if the publication is owned by a corporation the name of the corporation and the names and addresses of the stockholders owning or holding one per cent or more of the total amount of stock should be given.)

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(Signature of editor, publisher, business manager, or owner.)

Sworn to and subscribed before me this 23rd day of March, 1923.

E. R. CORNWELL, Notary Public.

(My commission expires May 31, 1923.)